TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 509.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 15, 1908.

(21,305.)

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1 Circuit Court of the United States for the Southern District of New York.

No. 1. At Law.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

Petition for Writ of Error.

And now comes Oceanic Steam Navigation Company, Limited, the plaintiff herein, and says:

On or about the 25th day of June, 1908, the above named Circuit Court entered a judgment herein in favor of the defendant and against this plaintiff dismissing the complaint of the plaintiff in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear in detail from the assignment of errors which is filed with this petition.

2 Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

LORD, DAY & LORD,
Attorneys for Plaintiff, 49 *Wall Street, New York, N. Y.*

(Endorsed:) U. S. Circuit Court, So. District of New York.—Oceanic Steam Navigation Company, Limited, Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 1.—Petition for writ of error.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun- 26, 1908, John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

This 25th day of June, 1908, comes the plaintiff by its attorneys and files herein and presents to the Court its petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the

United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of
4 error, upon the plaintiff giving bond according to law in the sum of $250.00, which shall operate as a supersedeas bond.

C. M. HOUGH,
United States District Judge
Holding the Circuit Court.

(Endorsed:) Circuit Court of the U. S., Southern District of N. Y.—Oceanic Steam Navigation Company, Limited, Plaintiff in Error, against Nevada N. Stranahan, Defendant in Error—(Action No. 1)—Order allowing writ.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—Service admitted. Henry L. Stimson, Att'y for Def't June 26/08.—U. S. Circuit Court, Southern District N. Y., Filed Jun- 26, 1908, John A. Shields, Clerk.

5 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Circuit Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you between Oceanic Steam Navigation Company, Limited, plaintiff, and Nevada N. Stranahan, defendant, a manifest error hath happened, to the great damage of the said plaintiff, Oceanic Steam Navigation Company, Limited, as by its complaint appears, we being willing that such error, Action No. 1, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the City of Washington on the 24th day of July 1908 next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, according to the laws and customs of the United States, should be done.

6 Witness, the Hon. Melville W. Fuller, Chief Justice of the United States the 26 day of June, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States of America that One hundred and thirty second.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States
for the Southern District of New York.

[Seal of U. S. Circuit Court, South. Dist. New York.]

Allowed by
C. M. HOUGH,
United States District Judge.

7 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages, numbered from one to 209 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of Oceanic Steam Navigation Company, Limited, Plaintiff in error, *vs.* Nevada N. Stranahan, Defendant in Error, Action No. 1, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of August, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-third.

[Seal of U. S. Circuit Court, South. Dist., New York.]

JOHN A. SHIELDS, *Clerk.*

8 [Endorsed:] E. & Ac. 2779. U. S. Circuit Court, So. District of New York. Oceanic Steam Navigation Company Limited, Plaintiff, against Nevada N. Stranahan, Defendant. Writ of error. Action No. 1. Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York. Service Admitted. Henry L. Stimson, Att'y for Def't. June 26/08. U. S. Circuit Court, Southern District, N. Y. Filed Jun- 28, 1908. John A. Shields, Clerk.

9 Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

To the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit:

STATE OF NEW YORK,
County of Franklin, ss:

Nevada N. Stranahan, petitioner and affiant, respectfully showeth that he was, prior to the commencement of the suit hereinafter referred to, Collector of the Customs for the Port and District of the City of New York, duly appointed according to law, and that on or about the 17th day of July, 1906, a suit was commenced against him by Oceanic Steam Navigation Company, Limited, No. 5 in the Supreme Court of the State and County of New York, for or on account of acts done by him under the Revenue Laws of the United States, and as such Collector, and that he has been served with process in said suit in said Southern District, and that no trial has been had in said cause.

He therefore prays that in pursuance of the Act of Congress, in such case made and provided, the said cause so commenced in the

said Supreme Court may be removed therefrom and entered on the docket of this Honorable Court, and thereafter proceeded in as a cause originally commenced in this Court.

And he will ever pray, etc.

And being duly sworn, deposes and says, that the matters hereinbefore set forth are true to the best of his knowledge, information and belief.

NEVADA N. STRANAHAN

Sworn to before me this 1st day of Sept. A. D. 1906.

WALTER J. MEARS,
Notary Public, Franklin County, N. Y.

I certify that, as counsel for the Petitioner, I have examined into the proceedings against him, and have carefully inquired into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

New York, Sept. 5, 1906.

HENRY L. STIMSON,
U. S. Attorney, Counsellor of the said Circuit Court.

(Endorsed:) U. S. Circuit Court—Oceanic Steam Navigation Co. Ltd. *vs.* Nevada N. Stranahan.—Petition to remove cause.—Henry L. Stimson, United States Attorney, Attorney for Defendant.—U. S. Circuit Court, Southern District New York. Filed Sep. 7, 1906, John A. Shields, Clerk.

10 The President of the United States of America to the Judges of the Supreme Court of the County of New York, [SEAL.] Greeting:

We, for certain reasons, being desirous that our Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, shall be certified of a certain cause, commenced before you against Nevada N. Stranahan, defendant, by Oceanic Steam Navigation Company, Limited, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said Circuit Court, at the City of New York, on the 14 day of September, 1906, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said Court may cause to be further done thereupon what of right ought to be done.

Witness, Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 7th day of September, in the year one thousand nine hundred and six.

JOHN A. SHIELDS, *Clerk.*

HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court.—Oceanic Steam Navigation Co. Limited, *vs.* Nevada N. Stranahan.—Certiorari.—Henry L. Stimson, U. S. Attorney, Attorney for Defendant.—I hereby certify, That

on the 7th day of September, 1906, at the City of New York, in my district, I served the within Citation upon the within-named The Judges of the Supreme Court of the County of New York by exhibiting to Edward Stepleton Clerk in Law Dept. by Clerk's Office for the County of New York, the within original, and at the same time leaving with him a copy thereof. Wm. Henkel, United States Marshal, Southern District of New York. Dated Sep. 7, 1906 U. S. Circuit Court, Southern District New York, Filed Sep. 7, 1908, John A. Shields, Clerk.

11 Supreme Court, County of New York.

Action No. 1.

OCEANIC STEAM NAVIGATION COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Summons.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, July 16, 1906.

LORD, DAY & LORD.
Plaintiff's Attorneys.

Office and Post Office address, No. 49 Wall Street, Borough of Manhattan, City of New York.

12 Supreme Court, County of New York.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Complaint as to Causes of Action Nos. 1 & 3.

The plaintiff, complaining of the defendant, alleges:

For a First Cause of Action.

First. The plaintiff at all the times hereinafter mentioned was, and still is a corporation duly organized and existing by virtue of the laws of Great Britain & Ireland, and was and now is engaged in the business of owning, maintaining and operating lines of steam-

ships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Second. The defendant at all the times hereinafter mentioned was and now is Collector of Customs at the Port of New York in the United States of America.

Third. Among the steamships so owned, maintained and operated by this plaintiff, at the times hereinafter mentioned, were the steamships Cedric, Celtic, Baltic, Oceanic, Majestic, Teutonic, Arabic, Cretic, Germanic and Republic.

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which its said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule. Any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

13 For a — and Further and Separate Cause of Action.

5th. On or about the 5 day of July, 1903, said steamship Arabic arrived at the Port of New York from foreign ports, pursuant to said schedule, having on board certain aliens who, as plaintiff is informed and believes, purposed immigrating into the United States of America, among whom was one Johan Klaara, who had embarked on said steamship at a foreign port as a passenger bound for the Port of New York.

6th. After the said arrival of said steamship at the Port of New York, the Secretary of the Department of Commerce and Labor of the United States of America, as plaintiff is informed and believes, without notice of any kind to the plaintiff or to any other person and without any proceeding in law or in equity and acting wholly without warrant or authority in law or in fact, and in violation of the rights of the plaintiff under the Constitution and laws of the United States, and in excess of any power in him vested, pretended and endeavored to impose a fine of one hundred dollars upon the plaintiff as the owner of said steamship, claiming to act under the provisions of Section 9 of an act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States" upon the alleged ground that it appeared to his satisfaction that the said alien above named, was at the time of his said embarkation upon the said steamship afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected by means of a competent medical examination at the time of such foreign embarkation and the said Secre-

tary of the Department of Commerce and Labor, as plaintiff is informed and believes, did thereupon direct the defendant to refuse clearance to said steamship from the Port of New York until said sum of one hundred dollars so alleged to be a fine was paid.

7th. As plaintiff is informed and believes no judicial trial was ever held to establish the liability of said steamship, the plaintiff or of any other person for said fine or the payment thereof, nor was any suit or action to recover said alleged fine or sum of money ever instituted, commenced or prosecuted therefor by or on behalf of the United States or any officer thereof against said steamship, the plaintiff or any other person.

8th. No notice of any description was ever given to the plaintiff or to any other person prior to the alleged imposition of said fine that the Secretary of the Department of Commerce and Labor, or the United States of America, or any officer thereof, had instituted or would institute any proceeding of any description to impose said alleged fine, nor had the plaintiff any knowledge of the institution of any such proceeding, and, if said Secretary or any other officer of the United States Government did conduct any proceeding, wherein they or any of them, pretended or endeavored to impose said fine, the plaintiff was never given any notice of such proceeding and had no knowledge thereof, and had no opportunity to be heard thereat.

9th. On or about the 11 day of July, 1903, the defendant, pretending to act under the order of the said Secretary of the Department of Commerce and Labor and as Collector of the Port of New York, unlawfully and unjustly demanded and exacted from this plaintiff the payment of said alleged fine of one hundred dollars as a condition of granting clearance to said steamship upon its next outward bound voyage from the Port of New York pursuant to said schedule, and stated that he would refuse to grant clearance for said next outward bound voyage unless such alleged fine was paid
14 to him, which payment the plaintiff then made to the defendant as such collector involuntarily and under duress and only for the purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of its said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the port of New York for foreign ports without obtaining clearance. Such money so exacted from the plaintiff was received by the plaintiff as and for so much money had and received by him to the plaintiff's use.

10th. At the time of said exaction of said one hundred dollars from the plaintiff as aforesaid it was the uniform practice of the defendant as Collector, as aforesaid, whenever informed by the Secretary of Commerce and Labor that he had imposed a fine under Section 9 of the said Act of March 3, 1903, upon a steamship, its owner or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such a practice

by the defendant had been made known by him among steamship companies operating steamships between the Port of New York and foreign ports, including this plaintiff. At the time of the refusal to grant clearance and of the payment of said sum, as above set forth, to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum and the refusal of the defendant to grant clearance without such payment were illegal, and that all payments made by them, or any of them, to obtain such clearance were made involuntarily and under duress. Such exaction of said sum of one hundred dollars hereinabove set forth was one of a series of exactions made under similar circumstances by the defendant as such Collector from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

11th. Said payment of said one hundred dollars made by the plaintiff to the defendant, as hereinbefore alleged, was made under protest and said sum was received by the defendant subject to said protest of the plaintiff.

12th. If said exaction of said sum from the plaintiff by said defendant, as aforesaid, was authorized by Section 9 of the Act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States," then said Section of said act is unconstitutional and void, in that it deprives the plaintiff of its property without due process of law, in contravention of the Fifth Amendment of the Constitution of the United States of America, and also in that it denies to the plaintiff its rights under the Sixth Amendment to the Constitution of the United States of America, among which are those to a trial by jury, and to be informed of the nature and cause of the accusation against it in a criminal prosecution and otherwise as stated in said Amendment.

15 For a 3rd and Further and Separate Cause of Action.

The plaintiff repeats the allegations contained in the first, second, third and fourth paragraphs of the first cause of action set forth in this complaint, and further alleges:

21st. On or about the 1 day of October, 1903, said steamship Germanic arrived at the Port of New York from foreign ports, pursuant to said schedule, having on board certain aliens who, as plaintiff is informed and believes, purposed immigrating into the United States of America, among whom was one Paolo Necchi who had embarked on said steamship at a foreign port as a passenger bound for the Port of New York.

22nd. After the said arrival of said steamship at the Port of New York, the Secretary of the Department of Commerce and Labor of the United States of America, as plaintiff is informed and believes, without notice of any kind to the plaintiff or to any other person and without any proceeding in law or in equity and acting wholly with-

out warrant or authority in law or in fact, and in violation of the rights of the plaintiff under the Constitution and laws of the United States, and in excess of any power in him vested, pretended and endeavored to impose a fine of one hundred dollars upon the plaintiff as the owner of said steamship, claming to act under the provisions of Section 9 of an act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States" upon the alleged ground that it appeared to his satisfaction that the said alien above named, was at the time of his said embarkation upon the said steamship afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected by means of a competent medical examination at the time of such foreign embarkation and the said Secretary of the Department of Commerce and Labor, as plaintiff is informed and believes, did thereupon direct the defendant to refuse clearance to said steamship from the Port of New York until said sum of one hundred dollars so alleged to be a fine was paid.

23rd. As plaintiff is informed and believes no judicial trial was ever held to establish the liability of said steamship, the plaintiff or of any other person for said fine or the payment thereof, nor was any suit or action to recover said alleged fine or sum of money ever instituted, commenced or prosecuted therefor by or on behalf of the United States or any officer thereof against said steamship, the plaintiff or any other person.

24th. No notice of any description was ever given to the plaintiff or to any other person prior to the alleged imposition of said fine that the Secretary of the Department of Commerce and Labor, or the United States of America, or any officer thereof, had instituted or would institute any proceeding of any description to impose said alleged fine, nor had the plaintiff any knowledge of the institution of any such proceeding, and, if said Secretary or any other officer of the United States Government did conduct any proceeding, wherein they or any of them, pretended or endeavored to impose said fine, the plaintiff was never given any notice of such proceeding and had no knowledge thereof, and had no opportunity to be heard thereat.

25th. On or about the 18 day of October, 1903, the defendant, pretending to act under the order of the said Secretary of the Department of Commerce and Labor and as Collector of the Port of New York, unlawfully and unjustly demanded and exacted from this plaintiff the payment of said alleged fine of one hundred dollars as a condition of granting clearance to said steamship upon its next outward bound voyage from the Port of New York pursuant to said schedule, and stated that he would refuse to grant clearance for said next outward bound voyage unless such alleged fine was paid
16 to him, which payment the plaintiff then made to the defendant as such collector involuntarily and under duress and only for the purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of its said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pur-

suant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the port of New York for foreign ports without obtaining clearance. Such money so exacted from the plaintiff was received by the plaintiff as and for so much money had and received by him to the plaintiff's use.

26th. At the time of said exaction of said one hundred dollars from the plaintiff as aforesaid it was the uniform practice of the defendant as Collector, as aforesaid, whenever informed by the Secretary of Commerce and Labor that he had imposed a fine under Section 9 of the said Act of March 3, 1903, upon a steamship, its owner or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such a practice by the defendant had been made known by him among steamship companies operating steamships between the Port of New York and foreign ports, including this plaintiff. At the time of the refusal to grant clearance and of the payment of said sum, as above set forth, to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum and the refusal of the defendant to grant clearance without such payment were illegal, and that all payments made by them, or any of them, to obtain such clearance were made involuntarily and under duress. Such exaction of said sum of one hundred dollars hereinabove set forth was one of a series of exactions made under similar circumstances by the defendant as such Collector from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

27th. Said payment of said one hundred dollars made by the plaintiff to the defendant, as hereinbefore alleged, was made under protest and said sum was received by the defendant subject to said protest of the plaintiff.

28th. If said exaction of said sum from the plaintiff by said defendant, as aforesaid, was authorized by Section 9 of the Act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States," then said Section of said act is unconstitutional and void, in that it deprives the plaintiff of its property without due process of law, in contravention of the Fifth Amendment of the Constitution of the United States of America, and also in that it denies to the plaintiff its rights under the Sixth Amendment to the Constitution of the United States of America, among which are those to a trial by jury, and to be informed of the nature and cause of the accusation against it in a criminal prosecution and otherwise as stated in said Amendment.

17 Wherefore, the plaintiff demands judgment against the defendant for the sum of Two hundred dollars ($200.); with interest on One hundred dollars ($100) thereof from July 11, 1903; with interest on One hundred dollars ($100) thereof from October 18, 1908; together with the costs of this action.

LORD, DAY & LORD,
Attorneys for Plaintiff.

Office and Post Office address, 49 Wall Street, New York, N. Y.

18 STATE, CITY AND COUNTY OF NEW YORK, *ss:*

John Lee being duly sworn, says: That he is the agent of the above named plaintiff: that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that the plaintiff is a foreign corporation, and that no officer of the plaintiff is now within the United States.

JOHN LEE.

Sworn to before me this 16 day of July 1906.

[SEAL.] W. A. JEFFRIES.
Notary Public, Kings County.

Certificate filed in New York County.

19 Circuit Court of the United States, Southern District of New York.

OCEANIC STEAM NAVIGATION COMPANY, LTD., Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

Answer.

The defendant answers the complaint as follows, the answer being made upon information and belief, except that he admits, as of his own knowledge, the fact that at all the times in the complaint mentioned he was and now is Collector of Customs at the Port of New York in the United States of America.

As to the First Pretended Cause of Action.

I. As to paragraphs First, Second, Third, Fourth and Fifth, defendant admits the allegations therein contained.

II. As to paragraph 6th, defendant admits the allegations
20 therein contained, except that he denies,

(1) That he acted without notice to the plaintiff,
(2) without notice to any other person,
(3) without warrant or authority in law,
(4) without warrant or authority in fact,
(5) in violation of any rights of the plaintiff,
(6) in excess of any power in him vested.

Further referring to the allegations of the said paragraph, defendant alleges that he did in fact, and lawfully, impose upon the plaintiff the fine or penalty which he is alleged to have "pretended and endeavored to impose," and that the ground of the said action referred to as "the alleged ground" thereof, was the true ground thereof.

III. As to paragraph 7th, defendant admits the allegations therein contained.

IV. As to paragraph 8th, defendant denies the allegations, and each of them, therein contained except that he admits that no notice was given that there had been instituted or would be instituted any Court proceeding.

V. As to paragraph 9th, defendant denies the allegations and each of them therein contained, except that he admits and
21 alleges that on or about the date alleged, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, he lawfully and justly demanded and required from the plaintiff the payment of a fine or penalty of One Hundred Dollars, as a condition of granting clearance to said steamship upon its next outward bound voyage from the Port of New York, pursuant to its schedule, and stated, among other things, that he would refuse to grant clearance for said next outward bound voyage unless said fine or penalty was paid to him, which payment the plaintiff then made to the defendant as such Collector.

VI. As to paragraph 10th, defendant denies the allegations and each of them therein contained, except that he admits and alleges that it was his practice at all times to act fully in accordance with the law.

VII. As to paragraph 11th, defendant denies the allegations and each of them therein contained.

VIII. As to paragraph 12th, defendant denies the allegations and each of them therein contained and refers to the Constitution, the law and the statutes.

As to the Third Pretended Cause of Action.

22 The defendant repeats its answer to paragraphs First, Second, Third and Fourth of the First Pretended Cause of Action, which paragraphs are incorporated by reference into said Third Pretended Cause of Action.

IX. As to paragraph 21st, defendant admits the allegations therein contained.

X. As to paragraph 22nd, defendant admits the allegations therein contained, except that he denies,

(1) That he acted without notice to the plaintiff,
(2) without notice to any other person,
(3) without warrant or authority in law,
(4) without warrant or authority in fact,
(5) in violation of any rights of the plaintiff,
(6) in excess of any power in him vested.

Further referring to the allegations of the said paragraph, defendant alleges that he did in fact, and lawfully, impose upon the plaintiff the fine or penalty which he is alleged to have "pretended and endeavored to impose," and that the ground of the said action referred to as "the alleged ground" thereof, was the true ground thereof.

XI. As to paragraph 23rd, defendant admits the allegations therein contained.

23 XII. As to paragraph 24th, defendant denies the allegations, and each of them, therein contained except that he admits that no notice was given that there had been instituted or would be instituted any Court proceeding.

XIII. As to paragraph 25th, defendant denies the allegations and each of them therein contained, except that he admits and alleges that on or about the date alleged, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, he lawfully and justly demanded and required from the plaintiff the payment of a fine or penalty of One Hundred dollars, as a condition of granting clearance to said steamship upon its next outward bound voyage from the Port of New York, pursuant to its schedule, and stated, among other things, that he would refuse to grant clearance for said next outward voyage unless said fine or penalty was paid to him, which payment the plaintiff then made to the defendant as such Collector.

XIV. As to paragraph 26th, defendant denies the allegations and each of them therein contained, except that he admits and alleges that it was his practice at all times to act fully in accordance with the law.

XV. As to paragraph 27th, defendant denies the allega-
24 tions and each of them therein contained.

XVI. As to paragraph 28th, defendant denies the allegations and each of them therein contained and refers to the Constitution, the law and the statutes.

HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

Office and P. O. Address, Room 50, P. O. Building, Borough of Manhattan, New York City.

STATE OF NEW YORK,
County of New York, ss:

Nevada N. Stranahan, being duly sworn, deposes and says: That he is the defendant above-named; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

NEVADA N. STRANAHAN.

Sworn to before me this 11th day of March, 1907.

FRANCIS B. ANTZ,
[SEAL.] *Notary Public N. Y. Co.*

25 Circuit Court of the United States, Southern District of New York.

No. 403.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

It is hereby stipulated that the issues in the above entitled action be tried by the Court without a Jury, the right to a trial by a Jury being expressly waived by both parties to this action; and it is

Further stipulated that the trial of the issues in the above entitled action be set down for trial subject to the convenience of the Court on Monday, April 29, 1907. Dated April 5, 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff
HENRY L. STIMSON,
U. S. Att'y, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Apr. 5, 1907, John A. Shields, Clerk.

26 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Post Office Building in the Borough of Manhattan, City of New York, on the 23 day of April, 1907.

Present: Hon. Charles M. Hough, District Judge.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Upon reading and filing the annexed affidavit of Darius E. Peck, verified April 22 1907, and the annexed consent of the attorneys of the parties to this action, it is

Ordered that this action be divided into two several actions, one of which shall be known as Action No. 1, and shall contain the First and Third causes of action set forth in the complaint herein, and the other to be known as Action No. 2, to contain the other causes of action set forth in the complaint herein, this severance to be
27 without prejudice to the proceedings already had in this action.

Enter.

C. M. HOUGH,
U. S. District Judge.

28 United States Circuit Court, Southern District of New York.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

It is hereby consented that the foregoing order severing this action may be signed and entered without further notice.

Dated, April 22 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
F.,
Attorney for Defendant.

29 United States Circuit Court, Southern District of New York.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

STATE OF NEW YORK,
County of New York, ss:

Darius E. Peck, being duly sworn, says:

That he is an attorney in the office of Lord, Day & Lord, the attorneys for the plaintiff in the above entitled action and is familiar with the proceedings had therein.

That the complaint contains thirty-nine causes of action. The defendant has answered the causes of action therein contained numbered One and Three. The time of the defendant to plead to, or move with respect to, the other causes of action set forth in said complaint has been extended until twenty days after notice to plead or move.

This affidavit is made in support of an application to sever
30 the above entitled action into two several actions, one containing the First and Third causes of action, set forth in the complaint herein, and the other containing the remaining causes of action, set forth in the complaint herein.

DARIUS E. PECK.

Sworn to before me this 22nd day of April, 1907.

CHARLES D. MILLER,
Notary Public, Suffolk Co.

Cert. Filed New York Co.

(Endorsed:) U. S. Circuit Court, Southern District of New York.—The Oceanic Steam Navigation Company, Limited, Plaintiff, against Nevada N. Stranahan, Defendant.—Order of Severance, Consent and Affidavit.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall St. New York City.—U. S. Circuit Court, Southern District N. Y., Filed Apr. 23, 1907. John A. Shields, Clerk.

31 United States Circuit Court, Southern District of New York.

OCEANIC STEAM NAVIGATION CO., LTD., Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Action No. 1.

The defendant submits the following proposed findings of fact, which it deems established by the evidence herein, and the following proposed conclusions of law, upon which it requests the Court to rule:

Findings of Fact.

First. The plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and existing by virtue of the laws of Great Britain and Ireland and was and now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise
32 between foreign ports and ports in the United States of America.

Found. C. M. H.

Second. The defendant, at all the times hereinafter mentioned, was Collector of Customs at the Port of New York in the United States of America.

Found. C. M. H.

Third. Among the steamships so owned, maintained and operated by this plaintiff at the times hereinafter mentioned were the steamships "Arabic" and "Germanic."

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which the said steamships were scheduled to make voyages between said Port

Found. C. M. H.

of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates
33 fixed and shown by said schedule, and any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

Fifth. On the respective days of arrival of the respective aliens mentioned in the complaint, the surgeon in

Found. C. M. H.

charge at Ellis Island sent notices which were addressed to and received by the plaintiff

and which reported that the respective aliens had been placed in the hospital with a disease of the eyes.

Sixth. At all the times mentioned in the complaint, the plaintiff had in Ellis Island its own representative whose business took him regularly there, and who inspected and had free access to the records of the hospital to which the said aliens

Found. C. M. H. were removed and to the other records at Ellis Island (including the minutes of the Special Inquiry Board which passed upon the right of the aliens to land and denied that right) and who might have reported to the plaintiff the sending of the respective aliens to the hospital, if he had desired or been instructed by plaintiff so to do.

Seventh. From the surgeon's notices above mentioned and from the plaintiff's representative above mentioned

Found. C. M. H. and from the previous impositions of penalties the plaintiff knew or might have known

34 that the penalties prescribed under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect of the said aliens.

Eighth. At none of the times referred to in the complaint, and at no other time did the plaintiff ask for any hearing or offer to submit any evidence or ask for any postponement

Found. C. M. H. of imposition of penalty or for any extension of time for obtaining or submitting evidence. Nor did it at any time send, or ask leave to send, a physician to Ellis Island for examination of any alien, which was always permitted.

Ninth. On or about the 5th day of July, 1903, said steamship "Arabic" arrived at the Port of New York from the Port of Liverpool, after a voyage of at least eight days,

Found. C. M. H. pursuant to said schedule, having on board certain aliens who purposed immigrating into the United States of America, among whom was Johan Klaara, who had embarked on said steamship at said Port of Liverpool as a passenger bound for the Port of New York.

Tenth. On July 10, 1903, the Commissioner of Immigration at Ellis Island transmitted to the Commissioner-

Found. C. M. H. General of Immigration at Washington, D. C. a copy of the medical certificate which had been made by the surgeon in charge at Ellis Island, together with the following letter which correctly stated the contents of

35 the said certificate:

Department of Commerce and Labor, Immigration Service.

No. 17837.

OFFICE OF COMMISSIONER OF IMMIGRATION,
NEW YORK, N. Y., *July* 10, 1903.

Commissioner General of Immigration, Washington, D. C.

SIR: Referring to Section 9 of the new law, I enclose a certificate signed by Dr. Geo. W. Stoner, Surgeon in charge of our Medical

Division, showing that Johann Klaara, a native of Russia, who arrived July 5, 1903, on the S. S. "Arabic," of the White Star Line, had trachoma at the time of embarkation. I am satisfied that the existence of such disease might have been detected by means of a competent medical examination at such time. I recommend that the Secretary of Commerce and Labor impose a fine of $100.

Respectfully

(Signed) WM. WILLIAMS,
Commissioner.

(Inclosure) U
(Endorsed:) 19636 July 10

Eleventh. On July 11th, 1903, the Secretary of Commerce and Labor sent to the Commissioner of Immigra-
Found. C. M. H. tion at Ellis Island, the following letter:

36 DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
WASHINGTON, *July* 11, 1903.

No. 39486.

Commissioner of Immigration, Ellis Island, N. Y. H.

MY DEAR SIR: The Department is in receipt of your letter of the 10th instant, No. 17,837, inclosing certificate of a Public Health and Marine Hospital Surgeon in the case of the alien Johann Klaara, aged 30, a native of Russia, ex S. S. "Arabic" July 5, 1903, from which certificate it would appear that said alien was afflicted with trachoma at the time of embarkation.

You are, therefore, instructed to impose, and certify to the Collector of Customs for collection, a fine of $100.00 in the case of this alien, in conformity with section 9 of the Act approved March 3, 1903.

Very truly yours,

GEO. B. CORTELYOU, *Secretary.*

(Endorsement:) 19636 Treas. Secretary of Commerce & Labor July 11/03 Imposing fine $100.00 case Johann Klaara Ex "Arabic" 7/5/03 U. S. Immigration Service Jul- 12 10:51 A. M. 1903 Executive office Ellis Island, N. Y. H.

The facts in this letter stated to have appeared to the satisfaction of the said Secretary did so appear to his satisfaction.

37 Twelfth. On July 13, 1903, the Commissioner of Immigra-
tion at Ellis Island sent the following letter
Found. C. M. H. to the Collector of the Port of New York:

No. 17837.

JULY 13, 1903.

Collector of the Port, New York City.

SIR: The Secretary of Commerce and Labor has imposed upon the White Star Line a fine of $100, because he is satisfied that the alien

Johann Klaara, a native of Russia, who arrived July 5, 1903 by S. S. "Arabic" of that line, was at the time of embarkation afflicted with trachoma, a dangerous contagious disease.

Pursuant to Department letter No. 39,486 of July 11, 1903, I hereby certify to you this fine for collection, in accordance with Section 9 of the act of March 3, 1903.

Respectfully,

JAM ——— ———,
Commissioner.

Thirteenth. On July 16, 1903, the Solicitor to the Collector of the Port of New York addressed to the Master of the said steamship "Arabic," care of the plaintiff, a letter which was received by the plaintiff on or about its date, as follows:

Found. C. M. H.

38 MPM Customs Service, Office of the Collector.

Law Division. Solicitor to the Collector. 'Arabic.'

NEW YORK, N. Y., *July* 16, 1903.

(TW)

Master, S. S. "Arabic," c/o White Star Line, 9 Broadway, N. Y.

SIR: The Secretary of the Department of Commerce and Labor has imposed a fine of $100, upon the S. S. "Arabic," because he is satisfied that the alien Johaan Klaara, who arrived per "Arabic" on July 5th, was at the time of embarkation afflicted with trachoma, a dangerous, contagious disease.

Please call at this office without delay in regard to the matter.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector.

F. R. $100.
H.

SC
W

Cashier's Office
paid
Jul- 18 1903
Custom House
N. Y.

Fourteenth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity.

Found. C. M. H.

39 Fifteenth. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Sixteenth. On July 18th, 1903, when said steamship "Arabic" was at the Port of New York, ready to depart therefrom on a voyage

for foreign ports, pursuant to its said schedule, the defendant, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of said fine of One hundred dollars ($100), as a condition of granting clearance to said steamship from the Port of New York for said voyage, and refused to grant clearance to said vessel unless said fine was paid to him, which payment the plaintiff then made to the defendant, as such Collector, involuntarily and under duress and only for the purpose of obtaining clearance for said steamship and avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without clearance.

Found as Amended. C. M. H.

40

Seventeenth. At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of the Department of Commerce and Labor that a fine had been imposed under Section 9 of the Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such practice by the defendant had been made known by him among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Found. C. M. H.

Eighteenth. At the time of the refusal to grant clearance, and of the payment of said sum of One hundred dollars ($100) to obtain the same, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them, or any of them, to obtain such clearance, were made involuntarily and under duress.

Found. C. M. H.

41

Nineteenth. Said exaction of said One hundred dollars ($100) was one of a number of exactions under similar circumstances made by the defendant, as such Collector, from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Found. C. M. H.

Twentieth. On or about October 1st, 1903, said steamship "Germania" arrived at the Port of New York from the Port of Liverpool, after a voyage of at least 8 days, pursuant to said schedule, having on board certain aliens who purposed immigrating into the United

Found. C. M. H.

States of America, among whom was Paolo Necchi, who had embarked on said steamship at said Port of Liverpool as a passenger bound for the port of New York.

Twenty-first. On October 5th, 1903, the Commissioner of Immigration at Ellis Island transmitted to the Commissioner-General of Immigration for the action of the Secretary of Commerce and Labor, a copy of the medical certificate which had been made by the surgeon in charge at Ellis Island, together with the following letter which correctly states the contents of the said certificate:

Found. C. M. H.

42

No. 19636.

OCTOBER 5, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: I submit for such action as the Secretary of Commerce and Labor may deem proper, a copy of medical certificate dated October 3, 1903 issued by Surgeon-in-Charge, showing that Paolo Necchi who arrived by S. S. "Germanic" of White Star Line, (list D, No. 18) on October 2, 1903 was suffering from trachoma, and that such disease could have been detected at the time of embarkation.

Respectfully,
(Signed) WM. WILLIAMS,
Commissioner.

(Enclosure 2294) J. M.

Endorsed: No. 19636. Oct. 5, 190–.

Subject.

Twenty-second. On October 6, 1903, the Secretary of Commerce and Labor sent to the Commissioner of Immigration at Ellis Island, the following letter:

Found. C. M. H.

43

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
WASHINGTON, *Oct.* 6, 1903.

No. 44782.

Commissioner of Immigration, Elllis Island, N. Y. H.

SIR: In reply to your letter of the 5th instant, No. 19,636, and in view of the facts submitted therewith, it would appear that the alien Paolo Necchi, a native of Italy, ex S. S. "Germanic," Oct. 2, 1903, was afflicted with trachoma at the time of embarkation.

You are therefore instructed to impose and certify to the Collector of Customs, for collection from the White Star Line, a fine of $100.00 in conformity with section 9 of the Act approved March 3, 1903.

Respectfully, GEO. B. CORTELYOU, *Secretary.*
Per R. S.

Endorsement: 19636. Oct. 6-1903. Secretary of Commerce & Labor. Author. imposition of $100.00 fine against White Star Line case of Paolo Necchi. U. S. Immigration Service. Oct 8, 8:43 A. M. 1903. Executive Office. Ellis Island, N. Y. H. 20210.

The facts in this letter stated to have appeared to the satisfaction of the said Secretary, did so appear to his satisfaction.

Found. C. M. H. 44 Twenty-third. On October 8, 1903, the Commissioner of Immigration at Ellis Island sent the following letter to the Collector of the Port:

No. 19636.

Department of Commerce and Labor, Immigration Service,

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *October* 8, 1903.

Collector of the Port, New York City.

SIR: Pursuant to the direction of the Secretary of Commerce and Labor, I have imposed upon the White Star Line a fine of $100, because he is satisfied that the alien Paolo Necchi, ex S. S. "Germanic" October 2, 1903, was afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, as certified on October 3, 1903, by the Surgeon-in-Charge of our Medical Division; and pursuant to Department letter No. 41,782 of October 6, 1903, I hereby certify to you this fine for collection, in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,

(Signed) WM. WILLIAMS,
VL *Commissioner.*

Blank Endorsement: Department of Commerce and Labor Immigration Service Office of the Commissioner New York, N. Y. —— 190— —— Commissioner
Subject:
No. of Inclosures ——

Found. C. M. H. 45 Twenty-fourth. On October 8, 1903, the Solicitor to the Collector of the Port of New York, addressed to the plaintiff a letter which was received by the plaintiff on or about its date as follows:

9865.

UNITED STATES CUSTOMS SERVICE.
PORT OF NEW YORK, *October* 8, 1903.

White Star Line, 9 Broadway, N. Y.

GENTLEMEN: I have to inform you that the Department of Commerce and Labor has imposed a fine of one hundred dollars upon the steamship "Germanic" because it is satisfied that the alien Paolo Necchi, a passenger ex "Germanic," October 2nd was at the time of embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

Respectfully,

F. E. HAMILTON, *S. C.*,
Solicitor to the Collector.

F. R. $100.
H.

W (TW)

Cashier's Office
Paid
Oct. 21, 1903
Custom House
N. Y.

Twenty-fifth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity.

Found. C. M. H.

46

Twenty-sixth. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Twenty-seventh. On October 18, 1903, when said steamship "Germanic" was at the Port of New York, ready to depart therefrom on a voyage for foreign ports, pursuant to its said schedule, the defendant, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of said fine of One hundred dollars ($100), as a condition of granting clearance to said steamship from the Port of New York for said voyage, and refused to grant clearance to said vessel unless said fine was paid to him, which payment the plaintiff then made to the defendant, as such Collector, involuntarily and under duress and only for the purpose of obtaining clearance for said steamship and avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without clearance.

Found as Amended. C. M. H.

47

Twenty-eighth. At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of the Department of Commerce and Labor that a fine had been imposed under Section 9 of the Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adop-

Found. C. M. H.

tion of such practice by the defendant had been made known by him to and among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Twenty-ninth. At the time of the refusal to grant clearance, and of the payment of said sum of One hundred dollars ($100) to obtain the same, it was well known to the defendant

Found. C. M. H. that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment,

48 were illegal, and that all payments made by them, or any of them, to obtain such clearance, were made involuntarily and under duress.

Thirtieth. Said exaction of said One hundred dollars ($100) was one of a number of exactions under similar

Found. C. M. H. circumstances made by the defendant, as such Collector, from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Thirty-first. No part of said sums so paid to

Found. C. M. H. the defendant by the plaintiff in the cases of said aliens, Johann Klaara and Paolo Necchi, has been repaid to the plaintiff.

All found. C. M. H.

Conclusions of Law.

I. The collections of the said sums of One hundred dollars ($100) respectively, under the circumstances hereinbefore set forth, from the plaintiff by the defendant, were authorized by Section 9 of the Act of Congress approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States."

49 II. The said Section of the said Act is constitutional.

III. The said several sums of One hundred dollars ($100) were constitutionally collected.

IV. The payments of the said several sums of One hundred dollars ($100) were lawful conditions imposed upon the privilege of clearance.

V. The defendant is entitled to judgment dismissing the complaint on the merits with costs; and I hereby direct judgment to be entered accordingly.

Respectfully submitted,

HENRY L. STIMSON,
U. S. Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Jun. 16, 1908, John A. Shields, Clerk.

50 United States Circuit Court, Southern District of New York.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Action No. 1.

The plaintiff submits the following proposed findings of fact, which it deems established by the evidence herein, and the following proposed conclusions of law, upon which it requests the Court to rule:

Findings of Fact.

First. The plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and existing by virtue of the laws of Great Britain and Ireland, and was
Found. C. M. H. and now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Second. The defendant, at all the times hereinafter mentioned, was and still is Collector of Customs at the
Found. C. M. H. Port of New York in the United States of America.

51 Third. Among the steamships so owned, maintained and operated by this plaintiff at the times herein-
Found. C. M. H. after mentioned were the steamships "Arabic" and "Germanic."

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which the said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with
Found. C. M. H. said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule, and any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

Fifth. On or about July 16, 1903, said steamship "Arabic" arrived at the Port of New York from the Port of
Found. C. M. H. Liverpool, England, after a voyage of at least eight days, pursuant to said schedule, having

on board certain aliens who purposed immigrating into the
52 United States of America, among whom was one Johann Klaara, who had embarked on said steamship at said Port of Liverpool as a passenger bound for the port of New York.

Sixth. On or about July 16, 1903, the defendant, as Collector of the Port of New York, caused the follow-
Found. C. M. H. ing letter to be sent to the plaintiff, which was received on or about the day of its date:

"MPM. Customs Service, Office of the Collector.

Law Division. Solicitor to the Collector.

"Arabic."

NEW YORK, N. Y., *July* 16, 1903.

Master S. S. 'Arabic,' c/o White Star Line, 9 Broadway, N. Y.

SIR: The Secretary of the Department of Commerce and Labor has imposed a fine of $100. upon the S. S. 'Arabic,' because he is satisfied that the alien Johann Klaara, who arrived per 'Arabic' on July 5th, was at the time of embarkation afflicted with trachoma, a dangerous, contagious disease.

Please call at this office without delay in regard to the matter.

Respectfully, F. E. HAMILTON,
Solicitor to the Collector."

Seventh. The receipt of such letter was the first notice the plaintiff received that the imposition of a fine
Found. C. M. H. under section 9 of the Immigration Act of 1903 was contemplated by the Secretary of the Department of Commerce and Labor, or any other officer
53 of the Government of the United States, with reference to the said alien Johann Klaara.

Eighth. In imposing said fine the Secretary of the Department of Commerce and Labor acted without notice
Found. C. M. H. to the plaintiff, and without any opportunity to the plaintiff to be heard.

Ninth. In imposing said fine the Secretary of the Department of Commerce and Labor acted only upon a letter addressed to him by the acting Commissioner of Immigration at
Found. C. M. H. New York, and a medical certificate made by the surgeon in charge at Ellis Island to the effect that said alien was suffering from trachoma at the time of foreign embarkation, and that the existence of such disease could have been detected at such time.

Tenth. Said fine was imposed by the Secretary of the Department of Commerce and Labor without a trial to es-
Found. C. M. H. tablish the liability of the plaintiff to said fine before any tribunal whatsoever.

Eleventh. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any judicial trial to establish the liability of the plaintiff to said fine.

Found. C. M. H.

Twelfth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity, and without any hearing or proceeding whatever of which the plaintiff had notice or at which the plaintiff had an opportunity to be heard or to produce evidence.

54

Found. C. M. H.

Thirteenth. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Fourteenth. On July 16, 1903, the defendant, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of said fine of One hundred dollars ($100), as a condition of granting clearance to said steamship upon its next outward bound voyage from the Port of New York for said voyage, and stated that he would refuse to grant clearance to said vessel unless said fine was paid to him, which payment the plaintiff then made to the defendant, as such Collector, involuntarily and under duress, and only for the purpose of obtaining clearance for said steamship and avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without clearance.

Found. C. M. H.

55

Fifteenth. At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of the Department of Commerce and Labor that a fine had been imposed under Section 9 of the Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such practice by the defendant had been made known by him to and among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Found. C. M. H.

Sixteenth. At the time of the refusal to grant clearance, and of the payment of said sum of One hundred dollars ($100) to obtain the same, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the de-

Found. C. M. H.

mand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them, or any of them,
56 to obtain such clearance, were made involuntarily and under duress.

Seventeenth. Said exaction of said One hundred dollars ($100) was one of a number of exactions under sim-
Found. C. M. H. ilar circumstances made by the defendant, as such Collector, from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Eighteenth. That at the time of the payment of said One hundred dollars ($100) to the defendant by the plain-
Found. C. M. H. tiff, plaintiff protested to the defendant against such payment, upon the ground that said payment was illegal and afforded to the plaintiff no opportunity to be heard.

Nineteenth. On or about October 8, 1903, defendant, as Collector of the Port of New York, caused the follow-
Found. C. M. H. ing letter to be sent to the plaintiff, which was received on or about the day of its date:

"UNITED STATES CUSTOMS SERVICE, 9865.
PORT OF NEW YORK, *October* 8, 1903.

White Star Line, 9 Broadway, N. Y.

GENTLEMEN: I have to inform you that the Department of Commerce and Labor has imposed a fine of one hundred dollars
57 upon the steamship 'Germanic' because it is satisfied that the alien Paolo Necchi, a passenger ex 'Germanic,' October 2nd was at the time of embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector."

Twentieth. The receipt of such letter was the first notice the plaintiff received that the imposition of a fine under Section 9 of the Immigration Act of March 3, 1903 was con-
Found. C. M. H. templated by the Secretary of the Department of Commerce and Labor, or any other officer of the Government of the United States, with reference to the said alien, Paolo Necchi.

Twenty-first. In imposing said fine the Secretary of the Department of Commerce and Labor acted without
Found. C. M. H. notice to the plaintiff, and without any opportunity to the plaintiff to be heard.

Twenty-second. In imposing said fine the Secretary of the Department of Commerce and Labor acted only
Found. C. M. H. upon a letter addressed to him by the acting Commissioner of Immigration at New York,

and a medical certificate made by the surgeon in charge at Ellis Island to the effect that said alien was suffering from tra-
58 choma at the time of foreign embarkation, and that the existence of such disease could have been detected at such time.

Twenty-third. Said fine was imposed by the Secretary of the Department of Commerce and Labor without a
Found. C. M. H. trial to establish the liability of the plaintiff to said fine before any tribunal whatsoever.

Twenty-fourth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without
Found. C. M. H. any judicial trial to establish the liability of the plaintiff to said fine.

Twenty-fifth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity, and without any hearing or pro-
Found. C. M. H. ceeding whatever of which the plaintiff had notice, or at which the plaintiff had an opportunity to be heard or to produce evidence.

Twenty-sixth. No suit or action to recover
Found. C. M. H. said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Twenty-seventh. On October 18, 1903, the defendant, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, de-
59 manded and exacted from the plaintiff the payment of said fine of One hundred dollars ($100), as a condition of granting clearance to said steamship upon its next outward bound voyage from the Port of New York for said voyage, and stated that he would refuse to grant clearance to said vessel unless said fine was paid to him, which payment the plaintiff then made to the defendant, as such Collector, involuntarily and under
Found. C. M. H. duress, and only for the purpose of obtaining clearance for said steamship and avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York, to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without clearance.

Twenty-eighth. At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of
Found. C. M. H. New York, whenever informed by the Secretary of the Department of Commerce and Labor that a fine had been imposed under Section 9 of the Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse clearance to such steamship until said fine was
60 paid, and the adoption of such practice by the defendant had

been made known by him to and among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Twenty-ninth. At the time of the refusal to grant clearance, and of the payment of said sum of One hundred dollars ($100) to obtain the same, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them, or any of them, to obtain such clearance, were made involuntarily and under duress.

Found. C. M. H.

Thirtieth. Said exaction of said One hundred dollars ($100) was one of a number of exactions under similar circumstances made by the defendant, as such Collector, from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Found. C. M. H.

Thirty-first. That at the time of the payment of said One hundred ($100) to the defendant by the plaintiff, plaintiff protested to the defendant against such payment, upon the ground that said payment was illegal and afforded to the plaintiff no opportunity to be heard.

Found. C. M. H. 61

Thirty-second. No part of said sums so paid by the plaintiff to the defendant in the case of the said aliens Johann Klaara and Paolo Necchi has been repaid to the plaintiff.

Found. C. M. H.

62 Thirty-third. At the times of the arrivals of the said aliens at the Port of New York the plaintiff had at Ellis Island a person known as a landing agent, whose duties were exclusively to look after the welfare of the aliens arriving by said steamships and to see that they were properly forwarded to their respective destinations.

Found. C. M. H.

Thirty-fourth. There was no evidence produced on the trial that in the cases of the aliens Johann Klaara and Paolo Necchi the said landing agent was, in fact, notified of the intention of any officer of the United States Government to impose a fine in case of either of said aliens under the provisions of Section 9 of the Immigration Act of 1903.

Found. C. M. H.

All refused. C. M. H.

Conclusions of Law.

First. The imposition of the fine upon the plaintiff in the case of the alien Johann Klaara was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

Second. The imposition of the said fine upon the plaintiff in the

case of the alien Johann Klaara was in violation of the right of the plaintiff to a trial by jury in a criminal prosecution under subdivision 3 of Section 2 of Article III of the Constitution of the United States.

Third. The imposition of the said fine upon the plaintiff in the case of the alien Johann Klaara was in violation of the right of the plaintiff under the Sixth amendment of the Constitution of
63 the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

Fourth. The exaction of the sum of $100 from the plaintiff in the case of the alien Johann Klaara deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Fifth. The imposition of the said fine upon the plaintiff in the case of the alien Paolo Necchi was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

Sixth. The imposition of the said fine upon the plaintiff in the case of the alien Paolo Necchi was in violation of the right of the plaintiff to a trial by jury in a criminal prosecution under subdivision 3 of Section 2 of Article III of the Constitution of the United States.

Seventh. The imposition of the said fine upon the plaintiff in the case of the alien Paolo Necchi was in violation of the right of
64 the plaintiff under the Sixth Amendment of the Constitution of the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

Eighth. The exaction of the sum of $100 from the plaintiff in the case of the alien Paolo Necchi deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Ninth. Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the liability to such fine or penalty.

Tenth. Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903 without a judicial trial to establish the guilt of the accused.

Eleventh. Congress has no power under the Constitution of the United States to provide for the taking of the property of any person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such person
65 and without a reasonable opportunity for such person to be heard.

Twelfth. Under Section 9 of the Immigration Act of March 3,

1903, clearance cannot be refused unless a fine has been legally imposed for an offense against the provisions of said Act.

Thirteenth. Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other executive officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

Fourteenth. Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

Fifteenth. The plaintiff is entitled to a judgment for the recovery of the sum of $100 paid to the defendant in the case of the alien Johann Klaara, with interest from the date of such payment.

66 Sixteenth. The plaintiff is entitled to a judgment for the recovery of the sum of $100 paid to the defendant in the case of the alien Paolo Necchi, with interest from the date of such payment.

Respectfully submitted,

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Jun- 16, 1908, John A. Shields, Clerk.

67 At a Stated Term of the United States Circuit Court, held in and for the Southern District of New York, at the United States Court and Postoffice building, Borough of Manhattan, City of New York, on the 22 day of June, 1908.

Present: Hon. Charles M. Hough, District Judge.

OCEANIC STEAM NAVIGATION CO., LTD.,
vs.
NEVADA N. STRANAHAN.

Action No. 1.

This cause having come on to be tried before the undersigned pursuant to a waiver of a jury, duly filed herein, and an opinion having been rendered by the Court, and filed, and findings of fact and conclusions of law having, in accordance with said opinion, been duly made and filed herein.

Now on reading and filing the said findings of fact and conclusions of law, and after hearing Lucius H. Beers and William G Choate, Esqs., of counsel for the plaintiff, and Henry L. Stimson, Esq., United States Attorney, of counsel for the defendant, on motion of Henry L. Stimson, United States Attorney for the defendant, it is

Ordered that judgment be entered dismissing the complaint herein with costs to be taxed.

C. M. HOUGH,
U. S. Judge.

The above is agreed to as to form.

LORD, DAY & LORD,
Attorneys for Plaintiff.

68 (Endorsed:) U. S. Circuit Court, Southern District of New York.—Action No. 1—Oceanic Steam Navigation Co. Ltd. *vs.* Nevada N. Stranahan,—Order for Judgment.—Henry L. Stimson, United States Attorney, Attorney for Deft.—Due service of a copy of the within is hereby admitted. New York June 19, 1908. Lord, Day & Lord, Attorney- for Plff.—U. S. Circuit Court, Southern District N. Y., Filed Jun- 22, 1908, John A. Shields, Clerk.

69 United States Circuit Court Southern District of New York.

OCEANIC STEAM NAVIGATION CO., LTD., Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

Action No. 1.

The issues in this action having been brought on for trial before the Hon. Charles M. Hough, District Judge, pursuant to a waiver of a jury, duly filed herein, and the plaintiff appearing by Lord, Day & Lord, and the defendant by Henry L. Stimson, United States Attorney, and the issues having been tried and a decision having been duly rendered in favor of the defendant directing a dismissal of the complaint with costs to be taxed,

Now on motion of Henry L. Stimson, United States Attorney, attorney for the defendant, it is

Adjudged that the complaint herein be and it is hereby dismissed with Thirty one 45/100 dollars ($31.45) costs.

Dated New York, June 26, 1908.

JOHN A. SHIELDS, *Clerk.*

Consented to as to form.
LORD, DAY & LORD,
Attorneys for Plaintiff.

70 (Endorsed:) U. S. Circuit Court, Southern District of New York.—Action No. 1—Oceanic Steam Navigation Co. Ltd. *vs.* Nevada N. Stranahan,—Judgment.—Henry L. Stimson, United States Attorney, Attorney for Def't.—U. S. Circuit Court, Southern District N. Y. Filed Jun- 26, 1908, John A. Shields, Clerk.

71 Circuit Court of the United States, Southern District of New York.

Action No. 1.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Bill of Exceptions.

This cause came on for trial on June 17, 1907, at a term of this Court held by the Hon. Charles M. Hough, United States District Judge, holding said Court pursuant to statute.

Messrs. Lord, Day & Lord appeared for the plaintiff; Mr. William G. Choate and Mr. Lucius H. Beers, of counsel.

Henry L. Stimson, United States Attorney, appeared for the defendant; Mr. W. T. Denison and Mr. Felix Frankfurther, Assistant U. S. Attorneys.

This cause was tried at the same time with two actions brought by the International Mercantile Marine Company against the
72 same defendant. The appearances for the plaintiff in each case were the same and the appearances for the defendant in each case were the same.

It was stipulated that all the testimony taken in the three actions should apply to each of the three actions.

The following proceedings were had in the above entitled cause, to wit:

A trial by jury was expressly waived by stipulation in writing dated April 5, 1907.

By stipulation the plaintiff was allowed to amend its complaint, paragraph number Twelfth, by adding at the end of said paragraph the following words:

"And also in that it gives to an executive officer of the Government powers which by Article III of the Constitution are given only to the judiciary, and denies to the plaintiffs a trial by jury in contravention of Subdivision 3 of Section 2 of Article III of the Constitution."

The plaintiff was further allowed by stipulation to amend the Twenty-eighth paragraph of its complaint, by adding at the end of said paragraph the following:

73 "And also in that it gives to an executive officer of the Government powers which by Article III of the Constitution are given only to the judiciary, and denies to the plaintiffs a trial by jury, in contravention of Subdivision 3 of Section 2 of Article III of the Constitution."

Said amendments to the plaintiff's complaint were made without prejudice to the proceedings already had in the action, and it was stipulated that the answer of the defendant to the complaint should stand as the answer to the complaint as so amended.

74 Testimony of SAMUEL S. CORTES, a witness called by the plaintiff, taken by deposition on May 16, 1907, pursuant to stipulation of parties.

Direct examination by Mr. BEERS:

I am connected with the Oceanic Steam Navigation Company, and have been with that Company since 1876. I have charge of the steerage passenger department of the White Star Line. Any communication with the United States Government or from any Government officials in relation to the enforcement of the Immigration Laws, would come to me in the ordinary course of the business of that Company. Those matters have been entirely in my charge ever since the Immigration Laws came into effect. I have made a special study and examination of the various Immigration Laws, which have been passed by Congress during the time that I have been connected with the Company.

The duties of my position require that I should be especially familiar with those laws.

I recall the first demand for payment which was made on the Oceanic Steam Navigation Company, under the provisions of
75 Section 9 of the Immigration Act of 1903. The letter which you show me was received by me shortly after it came into the office, in fact it was seen by me first of all, and then passed over to the other gentlemen who put their initials on it.

Mr. BEERS: I offer the letter in evidence.

Letter is received in evidence and marked plaintiff's Exhibit 1. By agreement the letter is transcribed into the minutes as follows:

PL'FF'S EX. 1. May 16–07–D.

"M. P. M. Customs Service, Office of the Collector.

Law Division. Solicitor to the Collector.

"Arabic."

NEW YORK, N. Y., *July* 16, 1903.

(TW.)

Master S. S. "Arabic," c/o White Star Line, 9 Broadway, N. Y.

SIR: The Secretary of the Department of Commerce and Labor has imposed a fine of $100 upon the S. S. "Arabic," because he is satisfied that the alien Johann Klaara, who arrived per "Arabic" on July 5th, was at the time of embarkation afflicted with trachoma, a dangerous, contagious disease.

Please call at this office without delay in regard to the matter.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector."

F. R. $100.
H.

SC.
W.

Cashier's Office.
Paid
July 18, 1903.
Custom House,
N. Y.

76 To Mr. Cortes, Please initial.

Accountant's
New York
Department."

The WITNESS: To the best of my ability this letter, plaintiff's Exhibit 1, was the first notice of any sort, which was received by the White Star Line in reference to this first demand under Section 9 of the Immigration Act. The Oceanic Steam Navigation Company is the corporate name of the White Star Line. That line is the owner of the Steamship "Arabic." In the course of the business of the White Star Line, any notices or letters with respect to demands under Section 9 of the Immigration Act, would have to come to me. They would have to bear my initial before they could be dealt with. This letter, plaintiff's Exhibit 1, bears my initials.

Q. Did you, prior to the receipt of this letter (Plaintiff's Ex. 1) receive any notice of any description that any officer of the United States Government was considering or was about to consider the question of imposing any fine on the White Star Line or on any officer or employee of that line by reason of the transportation to the United States of any passengers who were carried on the S. S.
77 "Arabic" on the voyage terminating at the Port of New York in July 1903?

A. If any such notice were received it would have been attached to that letter; all those documents are kept together and filed.

Q. I call your attention to Plaintiff's Ex. 1 and ask whether from an examination of the letter and from the fact that no other documents are connected with it excepting a blank voucher, you can testify whether or not you did receive any previous notice of any description?

A. As I said previously, if any previous notice had been received it would have been attached to this letter, therefore, no notice was received.

Q. And can you then testify that no notice was received?

A. I can.

Q. Did you ever hear in any way of any other notices?

A. No, sir.

Q. I call your attention to the final clause in this letter (Plaintiff's Exhibit 1), asking you to call at the office of the solicitor to the col-

lector and ask you to state fully what you did in response to that request?

A. I proceeded to the Custom House I think the same day I received this letter, in fact, I am sure of it. I called on Mr.
78 Hamilton and I protested against the imposition of the fine on the ground that it was unjust, for the reason that we had been deprived of all opportunity to defend ourselves, and I considered that we were entitled to call in expert testimony. I took the ground that a doctor frequently makes mistakes in the diagnosis of a case, and I gave my own case as an example. I stated to Mr. Hamilton that according to an expert's opinion some eight years before I ought to be perfectly blind. I had my eyes examined by Dr. Callan, a specialist in eye diseases, a man of reputation, who, after examining my eyes carefully, stated that within three years I would be blind from cataract. My eyes to-day, allowing for the difference in age, are as good as then. I stated that as a ground that the Steamship Company should be afforded an opportunity to test the cases through a medical officer. Mr. Hamilton agreed with me in this and gave his own case as an incident. He offered himself to an insurance company for a policy and was refused. He applied to another company and was promptly accepted. We discussed the matter very fully, but he wound up by saying that I did not have any cause to complain because notice was being given to an-
79 other line, informing them of the imposition of a fine of $800. I left him and we had to pay the fine. Nothing was suggested at all that the Government was willing to waive or relax this demand.

Q. Did the White Star Line pay this sum of $100, demanded in this first Exhibit 1?

A. We had to.

Q. What effect would it have had on the business of the White Star Line if clearance of the "Arabic" had been refused?

A. She would have been held up and could not sail.

The WITNESS: She is sailing on a regular schedule. The White Star Line had entered into contracts for the carrying of passengers and freight on the "Arabic." We had quite a number of passengers on the ship.

The White Star Line paid the $100 demanded by this letter, because the ship would have been held up by the authorities if we had not paid it. That was the only reason for our paying it. I do not think that Mr. Hamilton at the conversation as to which I have testified said anything to me about clearance being withheld if the fine was not paid. I believe we received an official notice that it would have to be paid, or clearance withheld, in fact the law
80 states so; that clearance should be withheld until the fine is paid.

Q. Have you been, Mr. Cortes, from the nature of your position in the Oceanic Steam Navigation Company, in frequent communication with other steamship lines in reference to matters relating to the enforcement of the United States Immigration laws?

A. I am chairman of the Ellis Island committee which has to

deal with all matters connected with Ellis Island where all these matters are discussed and where any grievances are discussed, resulting in frequent interviews with the Commissioner and also in taking legal advice.

Q. Do you know whether after the passage of the Immigration Act of 1903, the Collector of the Port of New York, adopted a uniform custom and rule in reference to exacting payments as a condition of granting clearance in all cases where it had been certified to him that a fine had been imposed under Section 9 of the Immigration Act, and if you do know about such a rule, what was the rule?

A. The rule was that when the Customs officers went to clear the ship, we had to deposit the fine of $100. That was
81 always the case with us and I do not think there was any difference in regard to the other lines. I never heard of any line that did not have to pay the fine prior to clearance. I did not have any subsequent conversation with Mr. Hamilton, nor with the collector, in reference to this subject. We were given to understand that the position was final in each case. This payment of $100. was paid at the time before the "Arabic" left, as near as I can remember. It was paid immediately before I next applied for clearance.

The letter which you show me was received by me. It bears my initials.

Mr. BEERS: I offer the letter in evidence.

Letter received in evidence and marked Plaintiff's Exhibit 2.

By agreement the letter is transcribed into the minutes as follows:

Ex. 2. May 16-07-D.

"UNITED STATES CUSTOMS SERVICE, 9865
"PORT OF NEW YORK, *October* 8, 1903.

White Star Line, 9 Broadway, N. Y.

GENTLEMEN: I have to inform you that the Department of Commerce and Labor has imposed a fine of one hundred dollars
82 upon the steamship "Germanic" because it is satisfied that the alien Paolo Necchi, a passenger ex "Germanic," October 2nd was at the time of embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

Respectfully,

F. E. HAMILTON, *S. C.*,
Solicitor to the Collector.

F. R.
$100.
H.

W (TW)

Cashier's Office
Paid.
Oct. 21, 1903
Custom House
N. Y."

Q. Please examine this letter (Plaintiff's Ex. 2) together with the voucher annexed to it and state whether it is the first notice of any kind which was received by the White Star Line that any officer of the United States Government was considering or was about to consider the question of imposing any fine on the White Star Line or on any officer or employee on any ship of that Line by reason of the transportation of any passengers who were on board the S. S. "Germanic" on her voyage to the Port of New York ending in October 1903?

A. The Commissioner at Ellis Island, I think, about that time, adopted a different system. I think he gave the Steamship Companies notice that he had notified the Collector of the Port
83 that a fine had been imposed or rather he notified the Steamship Companies that the Collector of the Port had been notified that a fine had been imposed, and after that we received this notice from the Collector. I cannot remember the exact date when the Commissioner adopted the plan of notifying the Steamship Companies, but the notice that a fine had been imposed by the Commissioner preceded the notice from the Collector of the Port probably two days, but there was no opportunity for people to appeal or say anything in defense.

Q. Were these notices which you say you think the Commissioner at Ellis Island sent to the Steamship Companies, notices that the fine had been imposed?

A. That a fine had been imposed in accordance with section 9. I am almost certain that if such a notice had been received it would have been attached to that letter.

The WITNESS: I recall the circumstances connected with the payment of these various fines under Section 9 of the Immigration Law and the circumstances under which payment was demanded.
84 In every case which arose prior to the first of January, 1905, the first notice received by the White Star Line was a notice that a fine had been imposed. The White Star Line paid the sum of $100, which was demanded in the letter of October 8, 1903, Plaintiff's Exhibit 2. Payment was made because clearance would have been withheld if we had not done so. If clearance had been withheld the ship would have been held up. The business would have been very seriously disorganized. Both payments, made under the demand contained in Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2, were made for the purpose of obtaining clearance at the next time when application was made for clearance for the "Germanic" and "Arabic," respectively.

Cross-examination by Mr. DENISON:

I cannot remember how long I have been chairman of the Ellis Island Committee. I should say about three or four years. I was not chairman of the committee at the time of these facts to which I refer. The Committee was not organized until some time afterwards.

I have had personal charge of the Ellis Island matters for my company ever since Ellis Island was established. I have always since that

time informed myself as to the immigration laws; it is my
85 duty, I am compelled to, among others with Section 9 of the Act of March 3, 1903. In July, 1903, I was familiar with these laws and with that section.

Q. Did your company have a landing agent down there at Ellis Island?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial, upon the question of imposition of a fine.

Objection overruled; exception.

A. They did; it was Mr. Phillips; he had been landing agent there for the last fifteen years.

Q. What have been his duties in that position?

Mr. BEERS: Same objection, on same ground.

Objection overruled; exception.

A. His duties are simply to attend to the landing and forwarding of passengers, to assist passengers, and to deliver them money which we have received for them.

I have seen a paper like the paper entitled "Surgeon's Notice that passenger has been sent to Hospital," which you show me.

Mr. DENISON: I offer in evidence this paper.

Mr. BEERS: I object to the admission of this paper in evi-
86 dence as incompetent, irrelevant and immaterial, and having nothing to do with the imposition of a fine.

Objection overruled; exception to plaintiff.

Paper received and marked "Defendant's Exhibit A."

By agreement the paper is transcribed into the minutes as follows:

Ex. A. May 16-07.

"Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Emigration Service, Medical Division.

PORT OF NEW YORK, *May* 16, 1907

Agent, White Star Line, 9 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving May 16, 1907 per Steamship "Cedric" and this day placed in hospital, for reasons given below:

		Immigrant	
8000.	John Jones.	26	Ireland—Disease of eyes.

Respectfully,

GEO. W. STONER,
Surgeon in Charge."

Cross-examination continued by Mr. DENISON:

Q. Similar notices to that have been forwarded to your company for many years?

87 Mr. BEERS: I object to this question on the ground that it is incompetent, irrelevant and immaterial, and having nothing to do with the imposition of a fine.

Objection overruled; exception.

A. Yes.

Q. Was it the practice of the department, or of the bureau at Ellis Island to send to your company notices similar to this, Defendant's Exhibit A, as early as July 1903?

Mr. BEERS: Same objection on the same grounds.

Objection overruled; exception.

A. I think so, yes.

Q. Was your company called upon to pay the hospital expenses of immigrants forming the subjects of notices like Exhibit A?

Mr. BEERS: Same objection on the same grounds.

Objection overruled; exception.

A. Yes.

Q. Did you keep a check on such charges?

Mr. BEERS: Same objection on the same grounds.

Objection overruled; exception.

A. Yes.

88 Q. When bills came in for immigrants brought over by your company how would you check up the correctness of these bills?

Mr. BEERS: Same objection on the same grounds.

Objection overruled; exception.

A. As soon as we received these reports (referring to Exhibit A) we checked up the numbers and the amounts charged.

The WITNESS: They were not checked by the landing agent or any other person. We simply took our landing agent's reports that these men had been sent to the hospital. He would not always report for what reason the aliens would be sent to the hospital. In some cases he did, for instance, scarlet fever, and such diseases he would report on.

I am aware that Section 9, imposing a fine on the steamship company for bringing in aliens suffering from certain diseases, indicates such diseases discovered at the time of shipment.

Q. Now, are you clear whether or not at the time you received Exhibit 1, or thereabouts, you received any written notice that clearance would be withheld?

A. We certainly should not have paid the fine before clearance if we had not received such a notice.

89 The witness, continuing:

Such a notice, if it had been received, would probably have been attached to the same paper as part of the file in that matter, but

inasmuch as that was the first fine paid, I am not quite sure on that matter.

Q. After the time that fine was paid concerning the case of July 5 or thereabouts, did your company change its practice with reference to dealing with the situation at Ellis Island?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. No, sir. I cannot recall that prior to the time when the first fine was imposed upon my company, that I had any conversations with other steamship representatives on the subject of Section 9. I cannot say that I knew of the impositions of any fine under that section upon other companies prior to that time, but it is possible I might, but I could not say either one way or the other.

The subject had not made any special impression upon my mind, prior to the receipt of Exhibit 1, except the fact that I was
90 dreading that we should be fined. I had not had any conversation with steamship companies generally upon the subject. I cannot remember whether I did afterwards.

Q. Mr. Cortes, since January, 1905, which was the time the change of practice was made by the Government, has your Company made any change in its practice?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. Not at all.

Q. Have you ever asked for any hearing in any of these cases?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. No, sir.

Q. Have you ever offered any evidence in these cases?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. No, sir; the evidence would have to be gotten on the other side; we had only fourteen days.

Q. Have you ever sent any physician down there to ex-
91 amine the immigrants?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. No, sir, for the same reason that the decision is final.

Q. Mr. Cortes, the present practice, since January, 1905, has been to notify your company that a hearing would be granted within fourteen days?

A. Yes.

Q. Now, since that practice was instituted, has your company ever

sent any physician to Ellis Island to examine any persons who were the subject of notices?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. No, sir.

Q. Have you at any time, either before or after the issue of Circular 58, instructed the company's representative at Ellis Island to ascertain and report whether any special certificate had been filed with respect to any immigrants coming on your line? By
92 special certificate I mean a certificate that the alien arriving on one of your steamships was afflicted with a dangerous contagious disease.

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. Yes, I have; I cannot remember the exact date.

Q. Approximately?

A. Well, since the fines were instituted for dangerous and contagious diseases, he was instructed to report such cases; he was not so instructed prior to the imposition of the first fine, covered by Exhibit 1; I cannot remember whether he was instructed prior to the imposition of the fine covered by Exhibit 2, but naturally I should think he would do so.

Redirect examination by Mr. BEERS:

It is my understanding that Section 9 of the Immigration Act of 1903 is the only section in that act relating to the imposition of fines in the case of immigrants afflicted with contagious diseases.

Q. Did you understand from these letters, Plaintiff's Exhibit 1 and Exhibit 2, that the demands of payment made in those
93 letters were made under the provision of Section 9 of the Immigration Act?

A. It so states in one of them, I believe. The letter of October 8, 1903, states distinctly that under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

I understand that the latter, Plaintiff's Exhibit 1, made a demand under the same section, Section 9.

Q. At your conversations with Mr. Hamilton, of which you have testified, did you and he discuss the subject of withholding of clearance?

A. That I cannot remember. We discussed wholly the injustice of the law, according to my idea.

Testimony of ROBERT S. CRATER, a witness called by defendant, taken by deposition on May 20, 1907, pursuant to stipulation of the parties.

Direct examination by Mr. DENISON:

My occupation is that of an immigrant inspector at Ellis Island. I have been in that position thirteen, I think fourteen, years,—thir-

teen positively. I have charge of the registry division of im-
94 migrants at Ellis Island. I was an immigrant inspector in 1903, boarding ships, inspecting first and second cabin passengers. I did not perform any duties on Ellis Island with reference to immigrants presented there, further than delivering the steerage passengers to Ellis Island for registration. I only had to do the checking off of names of first and second cabin passengers from the ship's manifest.

Q. Do you know the practice which existed in 1903 at Ellis Island with reference to checking the names of steerage passengers, when presented at Ellis Island?

Mr. BEERS: Objected to as immaterial and irrelevant, as to any of the issues involved in this action.

Objection overruled; exception.

A. The method of checking immigrants is done with a red ink pen, as each immigrant appears before each inspector; that check mark is made on the ship's manifest. The only names that are checked with red on the ship's manifest are those which appear before the inspector; the names of those who failed to pass the medical division would not be checked in red ink on the ship's manifest. That was the practice in 1903, is still the practice, and has been the practice ever since I have been in the service. After
95 the ship's manifest has been so marked, it is sent to the statistical division, where it is bound in book form and kept as a matter of record.

Q. Are the data in that division open to the inspection of representatives of steamship companies, if they care to see it?

Objected to as immaterial and irrelevant and incompetent; that the fact that these records may be open to inspection is not any evidence of notice to those companies of the facts which may be contained in those records.

Objection overruled; exception.

A. No, sir, because the moment we get through with them we send it down to the information bureau, so that if any one calls for their friends the immigrants can be located; they are then sent back to me at night, and early the following morning are sent to the statistical division, where any of the landing agents can have access to them. No landing agent could have access to these records while the inspector is checking the names on the manifest; it would
96 be impossible for him to watch them, as there are twenty working at times; it would not be possible for the landing agent to stand beside me while I was checking the names on the manifest; we do not permit any one to stand at the desk while we are registering. The first thing we do with the manifest after it is checked is to send it down to the information bureau.

Q. And they are open to anybody's examination?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. Yes, sir; it is open at my office for the inspection of any one until it is sent to the information bureau.

No cross-examination.

Testimony of WILLIAM F. McDOWELL, a witness called by the defendant, taken by deposition on May 20, 1907, pursuant to stipulation of the parties.

Direct examination by Mr. FRANKFURTER:

I am in charge of the executive work of the medical division of the immigration service at Ellis Island, and have been connected
97 with the service about seventeen years, and have had charge of the executive office of the medical division for the same length of time. I am familiar with the whole course of procedure, as far as it relates to the medical division.

Q. Will you tell us just what is the course of procedure by which an alien comes into the medical division?

Mr. BEERS: I object, on the ground that this evidence is immaterial and irrelevant, in no way connected with the issues here, and there is nothing to show that the steamship companies have any notice of what takes place.

Objection overruled; exception.

A. We rail off lines from one, two or three from the stairway in the entrance of the immigration building at Ellis Island. On these lines are stationed two doctors, one at the foot and one at the head of each line; the immigrants come up the stairway and are presented to them; the man at the head of the line examines for all defects other than diseases of the eye; the man at the end of the line examines for eye diseases; for any defects noted by either
98 doctor, there is a special mark made on the immigrant's clothing—a mark which is understood by the examiners—and they are turned one side into a compartment. Those that pass go on to the right an- up to the registry division. After the ship has landed those that have been sent aside by the doctors are taken back into the medical examination room, and there examined by as many officers as are necessary to complete the work. I mean by medical officers those of the Marine Hospital Service. Some of them receive a notation where the disease or injury is of such a slight nature as not to call for a certificate; these notations are made on the manifest by the inspector, who takes cognizance of them in relation to other matters in connection with the immigrant. For instance, a man has a thumb off, and they note it; this would appear on the manifest, the inspector using his judgment as to whether this man should be landed or sent before the board of special inquiry. The others are still further examined, and if the disease is such as requires a certificate, and not hospital treatment, they are certified, and sent before the registry officer, who in turn sends them to the special
99 inquiry division, and they go in the end to the board of special inquiry. Those that require medical treatment, their papers are made out and they are sent to the hospital, that is, to our

hospital at Ellis Island. As soon as the patient is sent to the hospital, there are a number of papers made out in relation to each case,—the record of his admission, the notification to the steamship company that the man has been admitted, and the notice to the registry division that we have held in the hospital such a man; these entries are made in books. There is a blank form made out notifying the steamship company that the alien has been sent to the hospital, suffering from whatever disease is apparent, or in cases where the disease cannot be diagnosed at the moment, they say "For observation." That report is made and sent immediately on the passing of the immigrant to the hospital; that practice has been in vogue since 1891. The paper which you show me is a sample of the notification I speak of.

That is sent immediately, upon the immigrant's arrival at the medical division, to the agent of the steamship line in every case; we make a copy of this notification; that is sent out at the very day of the arrival of the aliens in the medical division.

100 The representatives of the steamship lines visit us very often with respect to the notifications. I am familiar with the representatives of the steamship lines; the representatives often call; I don't remember what they ask, particularly. Reports are made of the patients in the hospitals; five reports are made every morning of all patients admitted to the hospitals under the management of the immigration service—of all patients who have been admitted the day previous. One report is made to the statistician's office, one to the superintendent's office, one to the special inquiry division, one to the information bureau, and one to the central office and the registry division. That is a daily report; the daily report contains the name, age and occupation, ship from which the alien arrived, the name of the hospital to which the patient has been sent (as we have a number of hospitals) and also the disease from which he is suffering, or, as near as we can make it out, the diagnosis of the disease.

Q. As far as you know, is that report accessible to the representatives of the steamship lines?

101 Mr. BEERS: I object to this testimony, upon the ground that it is entirely immaterial, irrelevant and incompetent; that if the report is accessible, it is not any notice to the steamship line of its contents.

Objection overruled; exception.

A. I couldn't say whether they used it or not; it is accessible; it is a daily report. We also send notification to the companies in case of death. In case an alien is to be deported, the customary practice from the year 1903 down to and including the year 1905, so far as the medical division is concerned, is this: There is a certificate to be made out by the medical officers; this certificate comes to my office, where I check it up, compare it, and that certificate, if it is a case that is not excludable according to law, goes to the special inquiry division. There it is placed before the board, to act upon it and decide whether the case shall be landed or not in case of a mandatory certificate. By mandatory certificate I mean those that come

under the statute as being excluded by law. The same course is pursued, with the exception of cases that are marked
102 "Special," or what we term "Special," being cases that come under the law for fines. In this case two certificates are made; one goes through the course before mentioned and the second goes to the chief clerk, who is the executive of the Commissioner, and that is as far as the medical division goes. When the case is finally to be deported, then the deporting physician sends a special requisition to my office, and I have the immigrant brought up and turned over to him and his receipt taken for. That is done on the same day that the alien is placed on board ship for deportation,—not the day that the ship sails, but the day before.

Q. During that whole period, from the time that a case actually gets into your division, until the time that a case has been deported, have the representatives of the steamship lines free access to your division for any information that they may desire?

Mr. BEERS: Objected to as incompetent, immaterial and irrelevant, and not proof of notice of anything to the plaintiff.

Objection overruled; exception.

A. Yes, sir, they have had that access in 1903, 1904 and 1905.

103 Q. Has that source of information been resorted to in the past by these representatives?

Mr. BEERS: Objected to as incompetent, immaterial and irrelevant, as it does not give any notice of anything to the plaintiff.

Objection overruled; exception.

A. Often—often during the years 1903, 1904 and 1905; every facility is accorded to the landing agents for information regarding medical cases. I do not understand that they have access to the hospital; they could see the aliens during visiting hours; that privilege comes through the office of the hospital. Doctors representing the steamship lines occasionally have visited or consulted with respect to aliens in our division in the past; if the steamship lines request that doctors be permitted to consult with the medical officers of the Government, such courtesy is always extended to medical men.

By Mr. DENISON:

The various practices and methods which I have testified to have existed at Ellis Island during and since 1903. I know the paper which you show me; it is the notification sent by my office
104 to the steamship company, notifying them that an alien has been placed in a hospital from one of their ships; I mean it is a copy of the notification. The original was made in this style, this is evidently a copy; the copy is kept in the copy-book. The reference to the book and page in the corner means, copy-book No. 23 of such records; it refers to the book in which copies of such notices are recorded when they are sent to the steamship companies indicated.

Mr. DENISON: I offer in evidence this paper.

Mr. BEERS: I object to the admission of this paper in evidence, upon the ground that it is immaterial; irrelevant and incompetent, and no proof of any notice of an intention on the part of the Government to impose a fine under Section 9.

Objected overruled; exception.

Letter received in evidence and marked defendant's Exhibit B.

The letter was spread on the record in full, and is as follows:

105 DEF'TS EX. B.

"Book 23. Duplicate. Copy. Page 75.

N. Y. Form 121.

Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *Oct.* 2, 1903.

Agent White Star Line, 5 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving this day per steamship Germanic, and this day placed in hospital, for reasons given below:

Immigration Hosp.

1518 Paolo Necchi,—24—Italy—Eyes.

Respectfully,

GEO. W. STONER,
Surgeon in Charge.
A. H. C."

The paper which you show me is a copy of a similar notice sent at the date indicated, with reference to one Van Geetson, among others.

Mr. DENISON: I offer this letter in evidence.

Mr. BEERS: I object, on the ground that it is incompetent, immaterial and irrelevant, and does not show any notice on the
106 part of the Government of an intention to impose a fine.

Objection overruled; exception.

Letter received in evidence and marked De-ant's Exhibit C.

The letter was spread on the record, pursuant to stipulation, as follows:

DEF'TS EX. C.

"Book 24. Copy. Page 32.

Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *December* 22, 1903.

Agent Red Star Line, 73 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving December 22, 1903, per steamship Zeeland, and this day placed in hospital, for reasons given below:

Long Island College.

2526 Wytze Byker—49—Holland—Hydrocele
2527 Alfons Van Geetson—28—Belgium—Disease of eyes
2530 Petros Lagowy—29—Austria—
2531 Gyulo Horvath—25—Hungary—Abscess—Face

Respectfully,

GEO. W. STONER,
Surgeon in Charge.
C. Y. S."

107 I have known a Mr. Vogel, who was formerly an agent, I think, of the Cunard Line. I think he represented the Line which owns the "Zeeland"; he was an agent of the company; I have seen him many times; he was for years employed by the company at Ellis Island; he was a landing agent of that company in 1903.

I know a Mr. Bernstein; he is a landing agent of one of the companies; I think he represents the Cunard Line, I am not certain about that; I know he represents one of the companies.

Cross-examination by Mr. BEERS:

The notices in the form of the papers marked Defendant's Exhibits B and C are the only notices sent to the steamship companies as to the admission of an immigrant to the hospital by the medical division. There are also notices different from those sent by the medical department to steamship companies such as death notices; there are transfer notices, or in other words, when a patient is transferred from one hospital to another, the same patient, the notice is sent. There are no other notices sent by the medical depart-
108 ment to the steamship companies other than notices like Exhibits B and C, and death notices and transfer notices. These are the only forms of notice ever given by the medical department to the steamship company.

I have no personal recollection of an immigrant Johann Klaara who arrived in July 1903 on the steamer "Arabic," or of the im-

migrant Palola Necchi who arrived on the "Germanic" in October 1903, or of Alphonse Van Geetson, who arrived on the "Zeeland" in December 1903, or the case of Dolly Nassif, who arrived on the "New York" in July, 1905, more than I have of the other 20,000 that I have handled since that time.

By Mr. DENISON:

I have testified in my direct examination as to the universal practice of my department with reference to all immigrants.

BYRON H. UHL, a witness examined on behalf of the defendant, by deposition, on May 20, 1907, pursuant to stipulation of the parties, testified as follows:

109 By Mr. FRANKFURTER:

My position is that of chief clerk of the Immigration Station at Ellis Island. I have been connected with the Immigration Service at Ellis Island for about fourteen years. The general function of the executive division at Ellis Island is the supervising of the general work of the station. I have the custody of all the records under my supervision. I am familiar with the course of procedure as to the right to examine records and documents.

Q. Will you tell us what reports are sent you from the medical division each day?

Mr. BEERS: I object to this evidence as immaterial and irrelevant and not within the issues of this action, which is to determine the legality of an alleged fine.

Objection overruled. Exception.

A. The report of admissions to the hospital, the notices of aliens who are dangerously ill, notices of deaths, any special certificates that are rendered under Section 9; that is all I can think of, off-hand. They are sent daily to the executive office. The
110 various steamship lines have representatives stationed at Ellis Island, known as landing agents, and they have been at the Island ever since I have been there.

Q. Have these agents access to the reports just mentioned?

Mr. BEERS: I object to this evidence as incompetent, immaterial and irrelevant, and not being any notice of the facts contained in the reports.

Objection overruled; exception.

A. They have. They may examine the hospital reports. The daily hospital reports are available for their inspection in the information division, where they may examine them. They do not come to our office.

A copy of the report sent from the hospital each day containing a list of the detained patients at length, is in the information division. They have access to it there. On such a report appears, if I remember rightly, the alien's name, age and sex, the ship's arrival, the date of arrival, the cause of admission to the hospital.

The paper which you show me refreshes my recollection.
111 It is a sample of the report which we receive daily. The columns headed "A12," B13," C14" and so on indicate the manifest list and number of alien. I mean, the ship's manifest, on which the alien's name is marked.

Our division also has custody of the minutes of the special inquiry boards. In ordinary cases, they contain the testimony of the witness before the Board of Special Inquiry.

In an ordinary case where the alien was examined as to some alleged medical defect, the minutes would contain a copy of the doctor's certificate and the testimony of the alien, or any witness who appeared in his behalf, together with affidavits or other documents presented in his behalf. I mean, a copy of the certificate issued by the medical division, whatever doctor issued it, indicating the defect or disease.

Q. Are those minutes accessible to these landing agents?

Mr. BEERS: I object to this evidence as incompetent, immaterial and irrelevant and not being any notice of the facts set forth in the minutes.

Objection overruled; exception.

A. They are, upon request.
112 These minutes are usually transcribed within 24 hours, and either the landing agents, or any other interested person, has access to them at any time after that. Upon request, they have had such access during 1903 and from that date down. I want to say that this testimony refers to medical cases. If you have referred to any contract labor cases, they would not have access to the minutes. The testimony which I have given covers medical cases.

The greater part of all reports ultimately reaches the statistical division.

Q. Are the reports and documents in the statistical division accessible to representatives of the steamship lines?

Mr. BEERS: I object upon the ground that this evidence is immaterial and irrelevant and not evidence of notice to the steamship companies of the facts therein set forth.

Objection overruled; exception.

A. They are, upon request.

The ship's manifest eventually finds its way to the statistical division. That is accessible to landing agents, upon request.
113 They are permitted to inspect these. That request is freely granted; so far as I know, it has never been refused.

In the ordinary instance, a special inquiry hearing is held in the case of an alien, who is detained for a medical defect, just as quickly as the case can be reached. It depends upon the number of detentions taken up in their chronological order as quickly as possible.

By Mr. DENISON:

The testimony that I have given with reference to the general practice down there refers to the practice during and since 1903, as well as at present.

The steamship line which owns the steamship "Zeeland" has a landing agent that comes to Ellis Island. The steamship lines which own the steamships "New York", "Arabic" and "Germanic" have such an agent. These lines have had such agents during and since 1903 at Ellis Island.

Cross-examination by Mr. BEERS:

The questions on which the Boards of Special Inquiry pass are whether or not particular aliens should be allowed to land,
114 that is, the Board of Special Inquiry decides whether or not a particular alien shall be allowed to land or shall be deported. That is all the Board of Special Inquiry does. In cases of diseases, which are enumerated in the Immigration Act, the certificate of the medical examiners to the facts that one of such diseases exists is conclusive on the Board, so far as the existence of that disease is concerned. If the medical examiners at Ellis Island certify that a certain alien is suffering with trachoma, the Board of Special Inquiry would be required, under the statute, to deport him. That is, if there was not any question as to his being an alien; that is right.

By Mr. DENISON:

To the best of my knowledge, there has never been any evidence before the Board of Special Inquiry whether or not the alien has the disease for which he is detained. I do not mean to say that the Board of Special Inquiry is prohibited by law from hearing any evidence as to whether the alien has the disease or not.

By Mr. BEERS:

In cases where the examining medical officer has certified
115 that an alien was suffering from trachoma, the special boards of inquiry at Ellis Island have never taken any other evidence on the subject of the existence of that disease other than the certificate of the examining surgeon.

By Mr. DENISON:

I do not know of any such case in which the Board of Special Inquiry has refused to consider any such evidence if it was offered. There have been cases in which the Board of Special Inquiry has reopened the case upon a revision of the medical officer's determination. That has happened when the alien remained in the hospital for a sufficient length of time for the doctors to be able to certify that a dangerous, contagious disease no longer existed. That was a case where there was a revision, so to speak, of the medical certificate.

By Mr. FRANKFURTER:

To my knowledge, such a revision has never taken place as a result, or in consequence, of a medical consultation with physicians of steamship lines, or physicians of the aliens, or any other physicians
116 not connected with the Government service; never so far as I know.

By Mr. DENISON:

I do not know of any cases in which physicians have been offered to testify on behalf of the alien, or the Steamship Company, as to the condition of the alien; but there have been applications made and I think re-examinations allowed of the alien; but so far as the steamship company is concerned, there have been only one or two instances, to my knowledge, where that has occurred, where they have consulted with officers of the medical division—the doctor of the ship concerned—that has occurred only in a few instances, to my knowledge.

By Mr. BEERS:

Where there has been any revision of the action of the Special Board of Inquiry in case of an alien supposed to be suffering with a loathsome or dangerous, contagious disease, that revision has been based on a revised certificate from the examining medical officer or surgeon. Before the Special Board of Inquiry re-considered its action, the medical officers of the Bureau of Immigration revised their certificates with respect to the physical condition of the particular alien.

117 By Mr. DENISON:

I offer in evidence a copy of Department Circular No. 58.

Mr. BEERS: I object to the admission of this Circular, on the ground that it is incompetent, irrelevant and immaterial, in that on its face it shows that it does not afford the Steamship Company a reasonable opportunity to be heard, that it seeks to deprive the plaintiff of its property without due process of law, and is deprived of its right to a trial by a Court and jury,—all in violation of the plaintiff's rights under the United States Constitution.

Objection overruled; exception.

Paper admitted in evidence and marked "Defendant's Exhibit D", and, by stipulation, written into the record as follows:

118 "DEF'DT'S EX. D."

"Procedure for Imposition of Fines on Account of Bringing Diseased Aliens to the United States.

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

BUREAU OF IMMIGRATION, *January* 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of section 9 of the immigration act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathsome or dangerous contagious disease shall state in terms whether, in his judgment, the 'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.'

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph hereof, the commis-
119 sioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner, or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz:

Department of Commerce and Labor, Immigration Service.

Office of ——— ———,
Port of ——— ———,
——— —, 190–.

To ——— ———, ——— of the steamship ——— ———:
(Master, agent, owner, or consignee.)

In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of Alien:	Steamship:	Disease:
——— ———	——— ———	——— ———

(Signature) ——— ———,
(Title) ——— ———.

Received the above notice ——— —, 190–, at ——— ———.
(Witness) ——— ———. ——— ———.

The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the
120 office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the triplicate to be delivered to the collector of customs, who will withhold clearance papers until the deposit is made.

3. Deposit.—The special deposit of $100, required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical certificate and duplicate notice, in order that such action may be taken as the evidence requires.

4. Stay of Action.—If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2 of this circular, the deposit of $100, has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded, together with the certificate of the examining surgeon, to the Commissioner-General of Immigration, for presentation to the Secretary of Commerce and Labor, by the said commissioner or inspector in charge, who shall at the same time present his written views as to whether the said fine should be imposed. If no evidence is submitted prior to the expiration of the said fourteen days, then said commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

121 5. Final Proceedings.—Upon the receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such data as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100, deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640

V. H. METCALF, *Secretary.*"

By Mr. DENISON:

I offer in evidence a letter, dated April 5, 1907, addressed to Honorable H. L. Stimson, United States Attorney, New York, signed F. P. Sargent, Commissioner General.

Mr. BEERS: I object to the admission of this letter, upon the ground that the number of fines which have been imposed or collected, under Section 9, is utterly irrelevant to the issues in this action.

Objection overruled; exception.

Letter received in evidence and marked 'Defendant's Exhibit E," and, by stipulation, written into the record, as follows:

122 "DEF'T'S EX. E.

In answering refer to No. 51440.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION AND NATURALIZATION,
WASHINGTON, *April* 5, 1907.

Hon. H. L. Stimson, United States Attorney, S. D. N. Y., New York, N. Y.

SIR: I desire to acknowledge the receipt of your letter of the 29th ultimo, stating that you will be glad to receive any information which the Bureau can furnish as to rejections of diseased aliens prior to March 3, 1903, and also as to the number of $100 fines incurred under section 9 of the act approved on that date.

The figures have been compiled at the expense of considerable pains and are as follows:

Aliens Debarred on Account of Loathsome and Dangerous Contagious Diseases (All Ports) from July 1, 1897, to Feb. 28, 1903.

Fiscal year ended June 30, 1898	258
Do. 1899	348
Do. 1900	393
Do. 1901	309
Do. 1902	709
July 1, 1902, to February 28, 1903	1223

Aliens Debarred on Account of Loathsome and Dangerous Contagious Diseases (All Ports) from Mar. 1, 1903, to Feb. 28, 1907.

March 1, 1903, to June 30, 1903	550
Fiscal year ended June 30, 1904	1560
Do. 1905	2198
Do. 1906	2273
July 1, 1906, to Feb'y 28, 1907	2773

123 *Amount of Fines Incurred under Section 9, Act Approved Mar. 3, 1903, from that Date to February 28th, 1907.*

Baltimore	$5,600	Boston	$7,500
Galveston	1,200	Jacksonville, Fla.	100
Key West, Fla.	800	New Orleans	1,900
New York	85,400	Philadelphia	7,300
Portland, Me.	300	Port Townsend, Wash.	1,000
San Francisco, Cal.	1,400		
Total			$112,500.00

The figures in the final statement, while approximate, are substantially correct, any slight discrepancy being insufficient to affect the integrity of the statement as a whole.

It is hoped that this data will be of assistance to you in connection with the cases now pending in your district.

Respectfully,

F. P. SARGENT,
Commissioner-General."

Mr. DENISON: I offer in evidence the following papers:

(1) A letter, dated December 24, 1903, addressed to the Commissioner General of Immigration, Washington, D. C., signed Joseph Murray, Acting Commissioner.

(2) A letter, dated December 26, 1903, addressed to the Commissioner of Immigration at Ellis Island, and signed George B. Cortelyou, Secretary.

(3) A letter, dated December 28, 1903, addressed to the
124 Collector of the Port, New York City, signed Joseph Murray, Acting Commissioner.

Mr. BEERS: I object to these papers being received in evidence as the basis of a fine, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard; these proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by a Court and jury, to which it is entitled under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits F I, F II, and F III.

125 "DEF'T'S EX. F I."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *December* 24, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: I herewith forward for such action as the Secretary of Commerce and Labor shall deem proper, *copy of medical certificate*, dated December 23, 1903, of Surgeon-in-Charge showing that Alfons Van Geetson who arrived December 22 by S. S. "Zeeland" (Red Star Line) was suffering from trachoma at the time of foreign embarkation, and that its existence could have been detected at such time.

Respectfully,
(Signed) JOSEPH MURRAY,
Acting Commissioner.

(Inclosure No. 5149.)

(Endorsement:) No. 19636. Dec. 24/03. Subject: To Commissioner-General of Immigration transmitting doctor's certificate in case of Alfons Van Geetson."

"DEF'T'S EX. F II."

No. 43213.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *December* 26, 1903.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: In reply to your letter No. 19,636 of December 24, 1903, *and in view of the facts submitted therewith, it appears to my satisfaction* that the alien Alfons Van Geetson, a native of Belgium, ex. S. S. "Zeeland" December 22, 1903, was afflicted with
126 trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected at said time.

I therefore direct that the Red Star Line, owners of said vessel, pay to the Collector of Customs of the District of New York, being the port at which said vessel arrived, the sum of $100, in conformity with Section 9 of the Act approved March 3, 1903, and that you certify this sum to said Collector for collection.

Respectfully,
GEO. B. CORTELYOU, *Secretary,*
Per S.

WVL

(Endorsement:) 19,636. Secretary of Commerce & Labor. Dec. 26, 1903. Imposing $100.00 fine case of Alfons Van Geetson. S. S. Zeeland Red Star Line. United States Immigration Service. Dec. 27 10-32 A. M. 1903. Chief Clerk's Office. Ellis Island, N. Y. H.

"DEF'T'S EX. F III.

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *December* 28, 1903.

Collector of the Port, New York City.

SIR: The Secretary of Commerce and Labor *has imposed upon the Red Star Line a fine of $100*, because he is satisfied, in accordance with certificate dated December 23, 1903, of U. S. Marine Hospital Surgeon in Charge that the alien Alfons Van Geetson, who arrived by S. S. "Zeeland" December 22, 1903, was afflicted at the time of foreign embarkation with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 43213 of December 26, 1903, I hereby certify to you this fine for collection in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,
(Signed) JOSEPH MURRAY,
Acting Commissioner.

VI.

(Blank Endorsement:) Department of Commerce and Labor. Immigration Service—Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of inclosures —.

127 Mr. DENISON: I offer in evidence the following:

(1) A paper, dated July 5, 1905, addressed to the American Line, owners of the Steamship "New York".

(2) A paper marked "Verification of Landing", No. 19,636.

(3) A letter, dated July 6, 1905, addressed to Honorable Robert Watchhorn, Commissioner of Immigration, and signed by the Special Deputy Collector.

(4) A letter, dated July 7, 1905, addressed to Hon. F. P. Sargent, Commissioner General of Immigration, Washington, D. C., signed by the Commissioner of Immigration, New York.

(5) A letter, dated July 7, 1905, addressed to Hon. Robert Watchorn, Commissioner of Immigration, signed by N. N. Stranahan, Collector.

(6) A letter, dated July 8, 1905, addressed to the Hon. F. P. Sargent, Commissioner General of Immigration, at Washington, signed Robert Watchorn, Commissioner.

(7) A letter, dated July 8, 1905, addressed to the Commissioner of

Immigration at Ellis Island, signed by Lawrence O. Murray, Assistant Secretary.

(8) A letter, dated July 11, 1905, addressed to the Hon. N. N. Stranahan, Collector of the Port of New York, and signed Lawrence O. Murray, and the certificate endorsed thereon, signed Robert Watchorn, Commissioner.

128 (9) A letter, dated July 12, 1905, addressed to the American Line, and signed Robert Watchorn, Commissioner.

Mr. BEERS: I object to these papers being received in evidence as a basis of a fine, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff, or the right to demand a deposit. They show on their face that the plaintiff has had no opportunity to be heard, and no notice of an intention to impose a fine before its property was demanded and taken. These proceedings cannot support the taking of plaintiff's property and the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by Court and jury under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively Defendant's Exhibits G I, G II, G III, G IV, G V, G VI, G VII, G VIII and G IX.

129 "DEF'T'S EX. G I."

Form 507.

Notice of Liability for Fine on Account of Bringing Diseased Alien to the United States.

Department of Commerce and Labor, Immigration Service.

(Prepare in triplicate.)

OFFICE OF COMMISSIONER,
PORT OF ELLIS ISLAND, N. Y. H., *July* 5, 1905.

To American Line, Owners of the Steamship "New York," July 2, 1905.

(Master, agent, owner, or consignee.)
9 Broadway, New York City.

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days

from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien: Dolly G. Nassif. Steamship: "New York." Disease: Trachoma.

——— ———,
(Name)
Commissioner.
(Official title)

SMR.

Received the above notice July 5, 1905, at 3:55 P. M. (Time.)
Per A. LEDERER.

Witness:
SAML YOUNG.

11-1641.

130 "DEF'T'S EX. G H."

19636.

Verification of Landing.

Department of Commerce and Labor, Immigration Service, Port of New York.

Name of alien: Nassif, Dolly. (Cherbourg.)
Arrived per S. S. New York. Line: American.
Date of arrival, July 2/05.
Date of application for relief or deportation: ———.
Manifest group and number: 24-22.
Age: 11. Sex: Female. Married or single: Single.
Occupation: ———.
Able to read: No. Able to write: No.
Citizen of Turkey.
Race: Syrian.
Final destination: Sioux City, Iowa, 1412—4 Ave.
Who paid passage? Father.
Money: ———.
Whether in United States before: No.
Health: Good.
Det. in Hospital: ———.
(N. B.—If admitted, state whether on primary inspection, after temporary detention, or by Board.)
Remarks: Father, George Nassif, U. S. Cit.

WM. E. JUNKER,
Chief of Statistical Division.

Findings of Medical Division: ———.
Final disposition: ———.
11-1598.

131 "DEF'T'S EX. G III."

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *July* 6, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: Referring to notices of liability for fines under section 9, Act of March 3, 1903, in the case of the S. S. "Bluecher"; alien passenger Ludwig Wieczorek: S. S. "Umbera"; alien passengers John Stupadas: and S. S. "New York"; alien passengers Elias Bashara; Dolly G. Nassif; and Joseph Rizk, which notices were received by the steamship companies on July 5, I have to state that the fines referred to therein have not been deposited with this office up to 4:30 p. m. this day, July 6th.

Respectfully,

(Signed) ——— ———,
Special Deputy Collector.

Copy.

132 "DEF'T'S EX. G IV."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 7, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to inclose, for your consideration, two certificates dated July 3, 1903, by the P. H. and M. H. Surgeon in Charge here, to the effect that Elias Bashasa and Dolly G. Nassif, ex S. S. "New York," July 2, 1905, have trachoma, a dangerous, contagious disease; that said aliens were afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time.

I also inclose a duplicate notices served on the line at 3.55 p. m. July 5, 1905, in accordance with Department Circular 58. The Collector informs me in a letter dated the 6th instant, that the $200 deposit required by said circular to be made as a condition precedent to the line's right to submit additional evidence, has not been made within the prescribed period of 24 hours.

I therefore recommend that the fine of $100 in each case be imposed.

Respectfully, ——— ———,
Commissioner.

SMR. Incl. 3936.

(Blank endorsement:) Department of Commerce and Labor Immigration Service. Office of the Commissioner. New York, N. Y., ——— —, 190–. ——— ———, Commissioner. Subject: ———. No. of Inclosures ———.

133 "DEF'T'S EX. G V."

EB.

Office of the Collector.

UNITED STATES CUSTOMS SERVICE. M.
PORT OF NEW YORK, *July* 7, 1905.

Hon. Robert Watchorn, Commissioner of Immigration.

SIR: I have to advise you of the deposit with this office today of the sum of three hundred dollars by the American Line, owners of the S. S. "New York"; for which sum the vessel has become liable under section 9, act of March 3, 1903 in the case of the alien passengers, Elias Bashara; Joseph Rizk; and Dolly G. Nassif; also of the deposit of the sum of one hundred dollars in the case of the S. S. "Umbria"; alien passenger, John Stupadas.

Respectfully,

N. N. STRANAHAN, *Collector.*
J. E. H.

(Endorsement:) 19636. N. Y. Jul- 7, 1905. Collector of Customs Advises deposits made in case Elias Bashara, Jos. Rizk & Dolly G. Nassif s/s New York & John Stupadas s/s Umbria. Referred to Law Clerk (E. R.). Delivered 1.05 M A Jul- 8 8.53 A. M.

134 "DEF'T'S EX. G VI."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 8, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to refer to my letters No. 19,636, of yesterday, transmitting medical certificates in the cases of John Stupadas, ex. S. S. "Umbria," Elias Bashara and Dolly G. Nassif, ex. S. S. "New York," July 2, 1905, reporting that the Collector had informed me that the deposit required by Circular No. 58, had not been made within the prescribed period of 24 hours from service of notice on the line.

I have this morning received a further letter from the Collector, stating that the deposit of $100 was made yesterday by the Cunard Line and $200 by the American Line on account of these cases.

Possibly in view of this you may desire to allow fourteen days within which to file additional evidence.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

SMR.

(Blank endorsement:) Department of Commerce and Labor, Immigration Service, Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of Inclosures —.

135 "DEF'T's EX. G VII."

No. 48969.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex. S. S. "New York" July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

Respectfully,

LAWRENCE O. MURRAY,
Assistant Secretary.

F. W.

WVL.

(Endorsed:) 19636. Secretary of Commerce and Labor. Jul 8, 1905. Imp. $200 fine case of Elias Bachasa & Dolly G. Nassif ex. New York, July 2, 1905. Referred to Law Clerk (E. I.). Delivered 12.25 M A Jul 10 8.31 A. M.

136 "DEF'T's EX. G VIII."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 11, 1905.

Hon. N. N. Stranahan, Collector, Port of New York, New York City.

SIR: I am in receipt of a letter from the Assistant Secretary of Commerce & Labor, of which the following is a copy:

No. 48969.

WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19,636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex. S. S. "New York," July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200., as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

Respectfully,

(Signed) LAWRENCE O. MURRAY,
Assistant Secretary.

WVL.

Pursuant to the foregoing direction I hereby certify to you the sum of $200. for collection from the American Line, owners of the S. S. "New York."

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

G.

(Endorsement in blank same as on Ex. G VI.)

137 "DEF'T'S EX. G IX."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 12, 1905.

American Line, 9 Broadway, New York City.

SIRS: After careful consideration of all the facts relating to the aliens Elias Bashara and Dolly G. Nassif, who arrived on the steamship "New York," July 2, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100. has been imposed in each case, and the Collector of the Port has been so informed. This action

has been taken in conformity with Section 9 of the Act approved March 3, 1903.

This notice is sent for your information.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

G.

(Endorsed in blank the same as Ex. G VI.)

138 Mr. DENISON: I offer in evidence the following papers:

1. A letter dated July 10, 1903, addressed to the Commissioner General of Immigration, Washington, D. C. signed "William Williams, Commissioner."

2. A letter dated July 13, 1903, addressed to the Collector of the Port, New York City, signed "William Williams, Commissioner."

9. A letter dated July 11, 1903, addressed to the Commissioner of Immigration at Ellis Island, and signed "George B. Cortelyou, Secretary."

Mr. BEERS: I object to these papers being received in evidence, upon the ground that they are entirely incompetent, irrelevant and immaterial, to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard. These proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and to deprive it of its right to a trial by a Court and

139 jury, to which it is entitled under the Federal Constitution. Under the provisions of the Federal Constitution, a fine can only be imposed by the judiciary, and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits H-1, H-2 and H-3.

"DEF'T'S EX. H 1."

No. 17837.

Department of Commerce and Labor, Immigration Service.

OFFICE OF COMMISSIONER OF IMMIGRATION,
NEW YORK, N. Y., *July* 10, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: Referring to Section 9 of the new law, I enclose a certificate signed by Dr. Geo. W. Stoner, Surgeon in charge of our Medical Division, showing that Johann Klaara, a native of Russia, who arrived July 5, 1903, on the S. S. "Arabic," of the White Star Line, had trachoma at the time of embarkation. I am satisfied that the

existence of such disease might have been detected by means of a competent medical examination at such time. I recommend that the Secretary of Commerce and Labor impose a fine of $100.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

(Inclosure U.)
(Endorsed:) 19636. July 10.

140 "DEF'T'S EX. H H."

No. 17837.

JULY 13, 1903.

Collector of the Port, New York City.

SIR: *The Secretary of Commerce and Labor has imposed upon the White Star Line a fine of $100.*, because he *is satisfied* that the alien Johann Klaara, a native of Russia, who arrived July 5, 1903, by S. S. "Arabic" of that line, was at the time of embarkation afflicted with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 39,486 of July 11, 1903, I hereby certify to you this fine for collection, in accordance with Section 9 of the act of March 3, 1903.

Respectfully,

——— ———,
Commissioner.

JAM.

141 "DEF'T'S EX. H HH."

No. 39486.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY.
WASHINGTON, *July* 11, 1903.

Commissioner of Immigration, Ellis Island, N. Y. H.

MY DEAR SIR: The Department is in receipt of your letter of the 10th instant, No. 17,837, inclosing certificate of a Public Health and Marine Hospital Surgeon in the case of the alien Johann Klaara, aged 30, a native of Russia, ex. S. S. "Arabic" July 5, 1903, from which certificate it would appear that said alien was afflicted with trachoma at the time of embarkation.

You are, therefore, instructed to impose, and certify to the Collector of Customs for collection, a fine of $100.00 in the case of this alien, in conformity with section 9 of the Act approved March 3, 1903.

Very truly yours,

GEO. B. CORTELYOU, *Secretary.*

(Endorsement:) 19636. Treas. Secretary of Commerce & labor. July 11/03. Imposing fine $100.00. Case Johann Klaara. Ex. "Arabic" 7/5/03. U. S. Immigration Service. Jul 12 10:51 A. M. 1903. Executive Office, Ellis Island, N. Y. H.

142 Mr. DENISON: I offer in evidence the following papers:

1. A letter dated October 5, 1903, addressed to the Commissioner General of Immigration, Washington, D. C., and signed "William Williams, Commissioner."

2. A letter dated October 6, 1903, addressed to the Commissioner of Immigration at Ellis Island, signed "George B. Cortelyou, Secretary."

3. A letter dated October 8, 1903, addressed to the Collector of the Port, New York City, signed "William Williams, Commissioner."

Mr. BEERS: I object to these papers being received in evidence, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard. These proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its
143 rights under the Fifth Amendment of the Constitution of the United States, and to deprive it of its right to a trial by a court and jury, to which it is entitled under the Federal Constitution. Under the provisions of the Federal Constitution, a fine can only be imposed by the judiciary, and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits I-1, I-2, and I-3.

"DEF'T'S EX. I."

No. 19636.

OCTOBER 5, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: I submit for such action as the Secretary of Commerce and Labor may deem proper, a copy of medical certificate dated October 3, 1903, issued by Surgeon-in-Charge, showing that Paolo Necchi who arrived by S. S. "Germanic" of White Star Line (list D, No. 18) on October 2, 1903, was suffering from trachoma, and that such disease could have been detected at the time of embarkation.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

(Enclosure 2294.)
JM.

(Endorsed:) No. 19636. Oct. 5. —— —, 190–. —— ——. Subject ——.

144 "DEF'T'S EX. III."

No. 41782.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *Oct.* 6, 1903.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: In reply to your letter of the 5th instant, No. 19,636, and in view of the facts submitted therewith, it would appear that the alien Paolo Necchi, a native of Italy, ex. s/s "Germanic," Oct. 2, 1903, was afflicted with trachoma at the time of embarkation.

You are therefore instructed to impose and certify to the Collector of Customs, for collection from the White Star Line, a fine of $100.00 in conformity with section 9 of the Act approved March 3, 1903.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*
Per R. S.

(Endorsement:) 19636. Oct. 6, 1903. Secretary of Commerce & Labor. Author. imposition of $100.00 fine against White Star Line case of Paolo Necchi. U. S. Immigration Service. Oct. 8 8:43 A. M. 1903. Executive Office, Ellis Island, N. Y. H. 20210.

145 "DEF'T'S EX. III."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *October* 8, 1903.

Collector of the Port, New York City.

SIR: Pursuant to the direction of the Secretary of Commerce and Labor, *I have imposed* upon the White Star Line a fine of $100, because he is satisfied that the alien Paolo Necchi, ex. S. S. "Germanic" October 2, 1903, was afflicted with trachoma, a dangerous, contagious disease, at the time of foreign embarkation, as certified on October 3, 1903, by the Surgeon-in-Charge of our Medical Division; and pursuant to Department letter No. 41,782 of October 6, 1903, I hereby certify to you this fine for collection, in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

VL.

(Blank endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York, N. Y., ——— ———, 190–. ——— ———, Commissioner. Subject: ———. No. of Inclosures —.

146 Mr. DENISON: Does the plaintiff admit that after July 11, 1905, the defendant paid over into the treasury of the United States the money referred to in the 17th cause of action of the International Mercantile Marine Company's case?

Mr. BEERS: Without admitting the materiality of the evidence as to such payment, the plaintiff admits the fact of the payment.

The testimony of ARTHUR LEDERER, a witness for the plaintiff, taken by deposition on May 22, 1907, was read in evidence, pursuant to stipulation of the parties.

Direct examination by Mr. BEERS:

I was connected with the International Mercantile Marine Company in the month of December, 1903, and in the month of July 1905. I had been connected with that company for eighteen years, since its organization. I am not sure of the exact date, but when the International Mercantile Marine Company succeeded the International Navigation Company, I was taken over as one
147 of the old officers, holding the same position with the new company. The International Mercantile Marine Company was organized prior to March 1, 1903. In December, 1903, and in July, 1905, I was manager of the passenger department of the International Mercantile Marine Company. I am not now connected with the company; I resigned on April 23, 1906. From the date of the organization of the International Mercantile Marine Company, down to the date of my resignation in 1906, I held the office of manager of the passenger department; as such manager I had charge of matters which arose in connection with the immigration laws.

The Red Star Line is one of the lines controlled by the International Mercantile Marine Company; The American Line is another line under the control of that company. My duties as manager of the passenger department included passengers by the ships of both the Red Star and American Lines, from the date of the organization of the International Mercantile Marine Company down to the date of my resignation. If any letters or notices were sent from any official of the United States Government to either
148 the Red Star or the American Lines, they would come to me.

Q. I show you a letter dated December 29, 1903, to the Master of the Steamship "Zeeland" of the Red Star Line, signed "F. E. Hamilton, Solicitor for the Collector," and ask whether that was a letter which came to you on or about December 29, 1903, (handing witness letter).

A. Yes, sir.

Mr. BEERS: I offer the letter in evidence.

Letter is received in evidence and marked "Plaintiff's Exhibit 3."

By stipulation the letter was entered in full in the record, as follows:

"United States Customs Service, Port of New York.

Office of the Collector, Law Division, Solicitor to the Collector.

DEC. 29, 1903.

Master S. S. "Zeeland," c/o Red Star Line, Empire Building, Manhattan.

SIR: The Secretary of Commerce & Labor has imposed a fine of one hundred dollars upon the S/s "Zeeland" because it is satisfied that the alien Alfons Van Geetson, who arrived on the 22nd instant, was at the time of foreign embarkation afflicted with
149 trachoma, a dangerous contagious disease.

Under the law the vessel cannot clear from this port until this fine is paid.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector.

3d class $100
Cash ticket JF.
Man. 326.
Ticket No. 32773.

Cashier's office
Paid
Jan. 27, 1904
Custom House N. Y."

Neither the Red Star Line nor the International Mercantile Marine Company received any notice from any Government official to the effect that a fine was demanded in the case of Alfons Van Geetson before this letter, Plaintiff's Exhibit 3, was received by the company; this was the only notice of the kind, first and last; this letter was the first notice of any description received by the company in respect to the imposition of any fine in the case of Van Geetson. The company paid the sum of $100 demanded in this letter (Plaintiff's Exhibit 3); it made the payment because
150 they did not feel like holding up the ship; passengers were booked and cargoes were to be taken care of. It would simply have meant the clearance of the ship not being given. The refusal of clearance would have had the effect of putting the business of the Red Star Line to a standstill; it would put us out of business; every hour of the day would have meant so much money; a question of a hundred or several hundred dollars could not have prevented us from paying them rather than have the ship held up.

Q. I show you a notice dated July 5, 1905, directed to the American Line, owners of the Steamship "New York," and signed by Robert Watchorn, Commissioner, and ask whether this paper was received by the International Mercantile Marine Company on or about this date, July 5, 1905.

A. Yes, sir; it was received by me.

Mr. BEERS: I offer this letter in evidence.

Letter received in evidence and marked Plaintiff's Exhibit 4."

By stipulation of the parties the letter was entered in the record in full, as follows:

151 "PL'FF'S EX. 4.

Original.

Notice of Liability for Fine on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor. Immigration Service.

(Prepare in Triplicate.) 7/6.

OFFICE OF COMMISSIONER,
PORT OF ELLIS ISLAND, N. Y. H., *July* 5, 1905.

Imm'ig. Fine
127 W.
July 2, 1905.

To American Line, Owners of the Steamship "New York."
(Master, agent, owner or consignee.)
9 Broadway, New York City:

In conformity with the requirements of the Department Circular No. 58, you are hereby notified that the certificate of the Examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

152	Name of Alien: Dolly G. Nassif.	Steamship: "New York" 127.	Disease: Trachoma.

(International Mercantile Marine Company, Jul- 7, 1905, Paid.)

ROBERT WATCHORN,
(Name):
Commissioner.
(Official Title)

24-22
Paid
Jul- 7, 1905
Protested.

N.

SMR.
M. J. CARTER.

Received the above notice July 5", 1905, at 3:50.
(Time.)

Witness:
SAMUEL YOUNG.

Per A. LEDERER."

11-1641.

This notice was the first notice of any description received by the owners of the Steamship "New York" with respect to the exaction of any sum of money from the company by reason of the bringing in of the alien Dolly G. Nassif; this was the only notice received by the company in respect to the demand in the case of this alien. The sum demanded in this case was paid to the Collector of this port by the owners of the Steamship "New York." It was paid for the same reason as stated in the previous case, because we did not care to have the ship held up. Clearance would have been held up unless we had paid the amount of the fine imposed upon us. It would have entailed serious losses upon the business of the company if clearance had been refused to the steamship "New York," as I have in-
153 dicated in my previous testimony.

Q. Were these sums demanded by these (indicating Plaintiff's Exhibits 3 and 4) paid by the company willingly?

A. Well, there was no alternative. The payment of the $100 which was demanded by this notice, (Plaintiff's Exhibit 4) was made through our Custom House brokers; they were Perry & Ryer.

Mr. BEERS: I offer in evidence a copy of such letter.

Mr. DENISON: Defendant admits that the paper offered in evidence is a true copy of a paper the original of which was filed with the Collector of Customs on or about July 7, 1905.

Letter received in evidence and marked Plaintiff's Exhibit 5.

By stipulation of the parties, the letter was entered in the record in full, as follows:

154 "PL'FF'S EX. 5.

Copy.

John C. Ryer. Edward T. Coons.

Cable Address
"Architrave"
Perry, Ryer & Co.,
Customs & Insurance Brokers and Forwarders.

Boston Office, Stone & Downer Co., 131 State Street.

Phil. Off., E. H. Bailey & Co., 405 Library St.

Import Agents N. Y. O. & W. R. R., Ontario Dispatch, and Ontario & Michigan Central Line.

Correspondence in all parts of the World. 66, 68 and 70 Beaver St. Coffee Exchange.
Telephone, 392 Broad.

NEW YORK, *July* 7, 1905.

Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $300, imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States the following passengers:

Dolly G. Nassif,
Elias Bashara,
Joseph Risk,

on the Steamship "New York" arrived July 2nd, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

INTERNATIONAL MERCANTILE MARINE CO.,
JOHN C. RYER, *Att'y.*"

155 Cross-examination by Mr. DENISON:

It was a part of my duty, as manager of the passenger department, to deal with questions affecting immigrants; that was in my charge for about thirty-three years. In the conduct of that branch of my duty it was absolutely my practice to familiarize myself with the immigration laws. I familiarized myself with such laws as soon as they became available, and in particular I familiarized myself with the Act of March 3, 1903; I was familiar with the provisions of that act shortly after its passage.

(The witness being shown Defendant's Exhibit C)—I have received papers similar in form to that which you show me; they were regularly received by my company.

My company is the owner of the Red Star Line, of which the Steamship "Zeeland" is a part. In December, 1903, the office was at 73 Broadway.

By Mr. BEERS:

During the years 1903 and 1905, the Red Star Line and
156 American Line had landing agents at Ellis Island we had an agent and an assistant; when I say that, I refer to the American and Red Star Lines; the American and Red Star Lines were associated in business prior to the formation of the International Mercantile Marine Company. The duties of the landing agent at Ellis Island were to accompany the immigrants and their baggage from the steamer's pier to Ellis Island, seeing that none of them escaped, delivering them any letters or telegrams addressed to them, paying them any moneys addressed to them, attending to their forwarding to destination by rail or otherwise. These were their chief duties; it is not supposed to be the duty of the landing agent to receive communications addressed to the company by the Government on the company's behalf; the landing agent was to attend to the speedy departure of the immigrants towards their destination; the landing agent was not authorized to represent the company in matters of business other than such as related to the departure of passengers from Ellis Island, and the delivery of mail, railroad tickets, telegrams, etc., addressed to them.

Cross-examination by Mr. DENISON:

When I instructed him to do so, or when I was interested
157 particularly in some case or cases, the landing agent would try to ascertain the cases of my immigrants who were sent to the hospital at Ellis Island. The notices such as you have shown me were frequently handed to him, and passed over to me or kept by him. Very often I did not get to see any of these, because they were immaterial, they were not of sufficient importance for me to look after them. I determined whether they were of sufficient importance; those are all matters of form; I should say that these notices of which you have shown me a copy are to conform with some rules or regulations at Ellis Island; they are of no weight or consequence to the manager of the passenger department, whose duties are very varied. I never took any note of papers of that character (Defendant's Exhibit C) until they had been delivered to me in person, either by the personal messenger of the Commissioner of Immigration or the Collector of the Port; then I knew it was a matter of importance.

Q. I show you a paper marked Defendant's Exhibit E IX, and ask you whether or not you can say you have received the original thereof.

158 A. I may have received such a notice; it is very likely I received the original of which this is a copy.

Q. Now, when you received Plaintiff's Exhibit 4, or after you received that exhibit, did you, or anybody on behalf of the company, ask for any hearing upon the subject of that letter?

Mr. BEERS: I object to the question as immaterial, irrelevant and

incompetent, upon the ground that there is no duty resting upon the steamship company to ask for a hearing. The letter does not offer a hearing.

Objection overruled; exception.

A. I do not think so.

Q. Did you offer to submit to the Government authorities any evidence bearing upon the subject referred to in that letter.

Same objection; same ruling; exception.

A. No.

159 Q. Did you ask for any extension of the time limited in that notice,—Plaintiff's Exhibit 4?

Same objection; same ruling; exception.

A. No.

By Mr. BEERS:

Q. In response to the question by the District Attorney, you have testified that certain notices may have been sent to the company by the landing agents of the company at Ellis Island;—did you refer to notices of the same character as Defendant's Exhibit C?

A. Yes, sir.

The Company's landing agent has no power to represent the company in matters relating to impositions of fines on the Company by the United States Government, or in relation to exactions of any description by the Government. He has no authority to receive communications from any Government official in reference to

160 fines or exactions.

By Mr. DENISON:

Q. Your company reimburses the Government for the hospital expenses of your immigrants at Ellis Island, does it not?

Mr. BEERS: Objected to as irrelevant.

Objection overruled; exception.

A. Yes, sir.

Q. And periodically you received bills from the Government for such expenses?

Same objection; same ruling; exception.

A. Yes, sir.

Q. How did you check those bills?

Same objection; same ruling; exception.

A. We look up the passenger manifest, first to see the name of the passenger appears on it, and whether it shows the date of

161 arrival, and if the date of arrival, which means practically the date of admission to the hospital, correspond, and the date of his deportation, if deported, corresponds with the notice of the day of his dismissal from the hospital, this gives us the period of hospital detention, thereby enabling us to tell about whether it was right or not. We do not take any means at all to test the question whether

any such alien was in fact sent to the hospital; we consider those matters *bona fide*.

Q. But you have received some reports, in the form of Defendant's Exhibit C?

Same objection; same ruling; exception.

A. Yes, sir, that has been true during and since 1903.

Mr. DENISON: I offer in evidence the letter dated July 2, 1905, addressed to the Agent American Line signed "Geo. W. Stoner".

Mr. BEERS: I object to the admission of this paper in evidence on the ground that it is incompetent, irrelevant and immaterial and does not inform the plaintiff of any intention of imposing a fine.

Objection overruled; exception.

Paper received in evidence marked "Defendant's Exhibit K". Paper is set forth in the record in full by stipulation as follows:

162 "DEF'T'S EX. K. May 28-07.

(Copy.) D.

Surgeon's Notice that Passenger has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service.

Book #31. Medical Division.

PORT OF NEW YORK, *July* 2, 1905.

Agent American Line, 9 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving July 2, 1905, per Steamship New York and this day placed in hospital, for reasons given below:

Immigrant.

18—Matti Isakkila 24 Russia —Disease of eyes.
19—Dally G. Nassif 11 Turkey— " " "

Long Island College.

20—Assif Abraham 11 Turkey—Disease of eyes.
21—Giacomo Cossolo 29 Italy — " " "
22—George Assir 20 Turkey— " " "
23—Miachel Assir 16 " — " " "

Respectfully,
(Signed) GEO. W. STONER.
Surgeon in Charge.
Y. S."

Plaintiff without admitting the materiality, relevancy or competency of the documents admits that a notice similar in form to the Defendant's Ex. K, this date, was issued by the Surgeon in charge

at the Port of New York of the Immigration service in the case of the alien Johann Klaara brought by the Steamship "Arabic" on or about July 5, 1903; and that the said notice was forwarded
163 to the plaintiff and received by it on or about the date of the arrival of the said alien.

The Testimony of FRANCIS E. HAMILTON, a witness for the plaintiff, taken by deposition on May 29, 1907, was read in evidence, pursuant to stipulation of the parties.

Direct examination by Mr. BEERS:

I am the solicitor to the Collector of this port, and have been in that position for five years past. I am familiar with the immigration law passed in March, 1903, as far as it relates to the Port of New York. I am familiar with the methods adopted by the U. S. Government for the enforcement of that law, so far as they relate to the Port of New York and the law division of the Collector's office. So far as the Collector of the Port of New York has any duty to perform under the terms of that Immigration Act, or with respect to immigration, I am familiar with the method in which he performs that duty; I am adviser in respect to any question which may
164 come up. I am familiar with the provisions of the Immigration Act of 1903. The rule adopted by the Collector's office in collecting fines under Section 9 was as follows: Notice was sent to the steamship company bringing in a person, upon receipt of advice from the immigration authorities that any alien was afflicted with a loathsome or dangerous contagious disease, which notice was to the effect that the steamship company was liable to a fine of $100 for having so brought in, in violation of Section 9, such alien. I think this was the rule adopted before the issuance of Circular 58, and was the rule which was first adopted in the Collector's office since the law of 1903 went into effect. The first notice which I speak of as having been sent to the steamship companies was signed by me personally.

Q. I show you a letter, Plaintiff's Exhibit 3, and ask you if that letter is one of such notices as you have testified to as having been issued prior to the promulgation of Circular 58.

A. Yes, sir. When such notice as the one you have shown me has been issued to steamship companies, I think that the Collector has never failed to collect the sum demanded; I know he has not; he has never waived or eliminated the fine or exaction in any case.
165 Representatives of the steamship companies protested to me against these exactions under Section 9 prior to the issuance of Circular 58, several times, verbally. I think that in every case when such a protest or objection was made, I stated that the fine would not be eliminated, but I know it never was eliminated; that was the uniform rule of the Collector's office. This notice which you have shown me was issued in accordance with the rule which was adopted by the Collector prior to the promulgation of Circular 58. In every case the sum mentioned was demanded as an exaction for the issuance of clearance. Quite a large number of notices similar in character to the notice Plaintiff's Exhibit 3 were signed by me

and sent to steamship companies, between the time when the Immigration Act of 1903 went into effect and the date of the issuance of Circular 58—some hundreds, as I recall them. I am familiar with the provisions of Circular 58 of the Department of Commerce and Labor. I am familiar with the rule which was adopted and pursued by the Collector of the Port of New York in respect to the collection of exactions under Section 9 of the Immigration Act after Circular 58 was issued. Subsequent to the issuance of Circular 58, notices in the form of Plaintiff's Exhibit 4, or exact duplicates
166 thereof, were sent by the Commissioner of Immigration at this port to the Collector, in cases where payment was demanded under Section 9; one went to the steamship company; I think they were both originals. When a notice in form like Plaintiff's Exhibit 4 was received by the Collector, in every case he exacted a payment or a deposit of $100 before issuing clearance to the vessel named in the notice. In each case he exacted the money, whatever it was. I understand that that was the uniform custom of the Collector, from the time of the issuance of Circular 58 to now. These notices from the Commissioner of Immigration of this Port, like Plaintiff's Exhibit 4, came to me personally. A series of protests against the exactions under these notices were made to the Collector, but in every case, notwithstanding any protest or objection, the sum specified was collected before clearance was issued; it was never waived or eliminated. As many deposits were taken after the issuance of Circular 58 as there were notices; there was a large number of notices; there were several hundred, I think.

Cross-examination by Mr. DENISON:

Q. After the promulgation of Circular 58 (Defendant's Exhibit D) was any change made by the steamship companies, or any
167 of them, in their practice with reference to submitting evidence on the questions involved?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial, upon the ground that whatever the companies may have done pertaining to such notices has nothing to do with the legality of the exaction which had theretofore been made; that in any event the practice of submitting evidence within fourteen days did not afford the plaintiff a reasonable opportunity to be heard.

Objection overruled; exception.

A. Absolutely none, so far as my knowledge goes.

Q. So far as you know, was any evidence ever submitted by any steamship company?

Same objection; same ruling; exception.

A. Never have known of any evidence being submitted, either before or after the promulgation of Circular 58. There never was any request made through the Collector's office, so far as I know, for an extension of the fourteen days' limit in the notices sent after the issuance of Circular 58.

Q. When deposits were made by the steamship companies, pursu-

ant to the notice sent out under Circular 58 (a sample of
168 which notice is in evidence as Plaintiff's Exhibit 4) what disposition was made by the Collector of that money?

Same objection; same ruling; exception.

A. It was held for the fourteen days allowed by that notice, subject to any further order of the Secretary of Commerce and Labor. It was held in a special fund, by an official of the Custom House, until the expiration of the fourteen days, and then, no further directions being received, it was passed to the credit of "Fines, penalties and forfeitures." The covering of the amount of the deposit in the treasury would be made upon and after the receipt of a letter such as Defendant's Exhibit GVIII in every case. The money was then covered in a special account of "Fines, penalties and forfeitures." Prior to that time, it was held in a special account as a deposit. In case the Secretary of the Treasury did not finally impose the penalty, the amount deposited would be returned to the depositors.

Q. I note in Plaintiff's Exhibit 4 that it is required as a condition of clearance that the deposit be made within 24 hours after the receipt of the notice in the form of that exhibit.—Will you state whether or not in practice that limitation was strictly enforced?

Same objection; same ruling; exception.

A. It was not strictly enforced; under certain circumstances, the time was extended, sometimes to 48, and I think even to 60
169 hours.

By Mr. BEERS:

Q. Mr. Hamilton, you have testified that under the terms of Circular 58, various sums, which you call "deposits," were made with the Collector of the Port;—were any of these sums ever repaid to the steamship lines which made payments?

A. Never.

By Mr. DENISON:

Q. So far as you know, was any effort made by any of the steamship lines to meet the *prima facie* case referred to in the notices pursuant to which these deposits were made?

Mr. BEERS: Objected to as immaterial, irrelevant and incompetent, on the ground that the notice did not afford the steamship companies a reasonable opportunity to be heard, and threatens to deprive them of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Federal Constitution.

Objection overruled; exception.

A. Never heard of such a case.

By Mr. BEERS:

I do not know that a series of threats were made by the steamship companies, to recover the amounts exacted under Section 9 of the Immigration Act, on the ground of the alleged illegality of the exaction.

170 Counsel for both parties submitted the following agreed statement of facts with reference to the alien involved in the action of the International Mercantile Marine Company *v.* Stranahan, No. 3:

1. That at or about this date, the following letter was sent by the Commissioner of Immigration to the American Line, as addressed, and was received by the plaintiff, the owner of the said Line.

This letter is marked "Plaintiff's Exhibit VI," and is as follows:

"*Notice of Liability on Account of Bringing Diseased Alien to the United States.*

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.)

OFFICE OF THE COMMISSIONER OF IMMIGRATION,
PORT OF NEW YORK, *August* 8, 1905.

To American Line, Owners of the Steamship "New York," August 6, 1905, 9 Broadway, New York City:

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under
171 the provisions of Section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port, within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship:	Disease:
Hage Elias Faris.	"New York."	Trachoma.

SMR.

(Signed) ROBERT WATCHORN,
(Name.)
Commissioner.
(Official title.)

Received the above notice Aug. 8, 1905, at 1.10 P. M.
(Time.)
AMERICAN LINE,
Per F. BOWERS.

Witness:
SAMUEL YOUNG."

2. That this letter was the first and only notice to the effect that a payment was demanded in the case of the alien to whom it refers.

3. That the sum of $100 demanded in this letter, (Plaintiff's Exhibit 6) was paid by International Mercantile Marine Company on August 9, 1905.

172 4. That such payment was not made voluntarily but for the purpose of obtaining clearance of the ship and thereby avoiding the serious derangement of the plaintiff's business and the heavy financial loss which would result from the failure of the ship to obtain clearance.

5. That coincident with the said payment which was made to the Collector of Customs of the Port of New York, there was filed with the said Collector a letter, marked Plaintiff's Exhibit 7, of which the following is a copy.

AUGUST 8, 1905.

"Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $200, imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States Wordy Toome and Hage Elias Faris, passengers on the Steamship "New York," arriving Aug. 6th, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said steamship.

Yours truly,

AMERICAN LINE,
INTERNATIONAL MERCANTILE
MARINE CO."

6. That a notice, similar in form to defendant's Exhibit K, was issued by the surgeon in charge, at the Port of New York of

173 the Immigration Service, in the case of the alien referred to in said Plaintiff's Exhibit 6, and that the said notice was forwarded to the plaintiff and received by it, on or about the date of the arrival of the said alien. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of such notice.

7. That the papers marked "Defendant's Exhibit L 1-6" and hereinafter transcribed into this record, are received without objection by reason of the fact that no one has been called to prove the execution thereof, or the fact that they were sent in the course of official business. Those facts being admitted, but otherwise with reservation to the plaintiff of all objections in respect to relevancy, materiality and competency, these papers are as follows:

THE DEFENDANT'S EXHIBIT L-1.

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *August* 9, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y.

SIR: Referring to notices of liability for fines under Section 9 Act of March 3, 1903, I have to advise you that the Compagnie Generale

Transatlantique deposited with this office today the sum of one hundred dollars in the case of the alien passenger Meyer Halpern,
174 who arrived on the S. S. "La Gascogne." Also that the agents of the S. S. "New York" deposited today the sum of two hundred dollars for the alien passengers Hage Elias Faris and Wordy Toome.

The fine of one hundred dollars in the case of the steamship "Bulgaria," alien passenger Moritz Lichenthal has not yet been deposited.

Respectfully,

(Signed) N. N. STRANAHAN, *Collector.*

Copy.

THE DEFENDANT'S EXHIBIT L–H.

Department of Commerce and Labor, Immigration Service.

No. 19636.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *August* 23, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to enclose for your consideration, a certificate dated August 17, 1905, by the P. H. & M. H. Surgeon-in-charge here to the effect that Faris Hage-Elias, ex S. S. "New York," American Line, August 6, 1905, has trachoma, a dangerous contagious disease; that said alien was afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time. I also enclose a duplicate notice served on the Line at 1:10 p. m., August 8, 1905, in accordance with Department circular No. 58.

The required deposit having been made with the Collector,
175 a period of 14 days was allowed the Line within which to file evidence and show cause why a fine should not be imposed. No evidence or other statement having since been received from the Line, I recommend that a fine of $100 be imposed in accordance with section 9 of the Act of March 3, 1903.

Respectfully,

_____,
Commissioner.

SMR.
Incl. 10960.

THE DEFENDANT'S EXHIBIT L–III. (Enclosed in DEFENDANT'S EXHIBIT L–II.)

Treasury Department.

Public Health and Marine Hospital Service.

Form 6949.

Medical Certificate.

PORT OF NEW YORK, *August* 7, 1905.

Name, Faris Hage Elias.
Age, 39 Native of Turkey Race Syr.
S. S. "New York."
Arrived August 6, 1905.

This is to certify that the above-described immigrant has Trachoma which is a dangerous contagious disease. Said alien was afflicted with such disease at the time of foreign embarkation and its existence might have been detected by means of a competent medical examination at such time.

(Sgd.) GEO. W. STORER,
Surgeon, P. H. and M. H. S., in Charge.

To the Commissioner of Immigration.
Immigrant Hosp'l.
Copy.

176 THE DEFENDANT'S EXHIBIT L–IV.

No. 48969.

Department of Commerce and Labor, Office of the Secretary, Washington.

AUGUST 24, 1905.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: The Department has received, under cover of your letter dated August 23, 1905, No. 19,636 the record in relation to the alien Faris Hage Elias, ex S. S. "New York," August 6, 1905.

As a result of the evidence presented and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above-mentioned alien was, at the time of foreign embarkation, afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected at that time by means of a competent medical examination.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which port said vessel arrived, the sum of $100, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Col-

lector in order that the amount now held by him as a special deposit on account of said diseased alien, may immediately be covered into the Treasury as an immigration fine.

Respectfully, LAWRENCE O. MURRAY,
Assistant Secretary.

FJP. TRS.

177 THE DEFENDANT'S EXHIBIT L-V.

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *August* 25, 1905.

American Line, 9 Broadway, New York City.

GENTLEMEN: After careful consideration of all the facts relating to the alien Faris Hage Elias, who arrived on the steamship "New York" August 6, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100 has been assessed, and the Collector of the Port has been so informed. This action has been taken in conformity with Section 9 of the Act approved March 3, 1903. This notice is sent for your information.

Respectfully,

_____,
Commissioner.

CF.

178 8. That on or after August 25, 1905, the defendant paid over into the Treasury of the United States the money paid by the plaintiff pursuant to plaintiff's Exhibit 6 and referred to in the Twentieth cause of action of the International Mercantile Marine Company's Action No. 3. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of the fact.

9. That prior to the said payment over into the Treasury, the said sum was held by an official of the Custom House, in a special fund, as a deposit, to be returned to the plaintiff, in case the penalty was finally not imposed. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of the fact.

179 Mr. BEERS: Under my reservation made in Paragraph 7, I object to the admission of the papers marked defendant's exhibits L-1, L-2, L-3, L-4 and L-5, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff, or the right to demand a deposit from the plaintiff. They show on their face that the plaintiff has had no opportunity to be heard, and no notice of intention to impose a fine before its property was demanded and taken. These proceedings cannot support the taking of plaintiff's property and the imposition of a fine upon the plaintiff, for they seek to deprive the

plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by Court and Jury under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively De-
180 fendant's Exhibits L-I, L-II, L-III, L-IV, L-V and L-VI.

Mr. STIMSON: The defendant admits that the payment of $100, in each case referred to in the foregoing testimony by the plaintiff to the Collector of the Port of New York was made by the plaintiff involuntarily and under protest.

It is also admitted that the usual period of mail communication between the Port of Southampton, Liverpool and Antwerp, Europe and the Port of New York, is seven days each way.

181 The Court then took the above cause under consideration, and on June 16, 1908, made special Findings of Fact and Rulings upon Questions of Law, which are in the record herein.

The plaintiff, by its counsel, excepted to the Findings of Fact in the Requests to Find submitted by the defendant numbered "Sixth", as made by the Court, in so far as the Court found that a representative of the plaintiff inspected the records of the Hospital and Special Inquiry Board at Ellis Island, upon the ground that such finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find submitted by the defendant numbered "Seventh", as made by the Court, in so far as the Court found that the plaintiff knew or might have ascertained that penalties under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect to the aliens named in the complaint, upon the ground that such Finding was without support in the evidence, which exception was duly allowed by the Court.

The Plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find, submitted by the defendant, numbered
182 "Eleventh", as made by the Court, in so far as the Court found that the facts in the letter therein set forth did, as a matter of fact, appear to the satisfaction of the Secretary of the Department of Commerce and Labor, upon the ground that said Finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, excepted to the Findings of Fact in the Requests to Find, submitted by the defendant, numbered "Twenty-second", as made by the Court, in so far as the Court found that the facts in the letter therein set forth did, as a matter of fact, appear to the satisfaction of the Secretary of the Department of Commerce and Labor, upon the ground that said Finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, asked the Court to find each of the

sixteen Conclusions of Law so submitted by the plaintiff, and for judgment for the plaintiff for the full amount demanded in the complaint. The plaintiff's motions and requests, each and all, were denied by the Court, and to each and all of the rulings of the Court thereon the plaintiff, by its counsel, duly excepted, which exceptions were duly allowed by the Court.

The defendant then, by his counsel, asked the Court to find five Conclusions of Law submitted by him and that the plaintiff
183 was not entitled to recover from the defendant. The Court thereupon granted such requests and did so find each of the said five Conclusions of Law, to each of which rulings the plaintiff, by its counsel, duly excepted, which exceptions were allowed by the Court, and the Court directed that the complaint of the plaintiff be dismissed, to which rulings the plaintiff, by its counsel, duly excepted, which exception was allowed by the Court.

The Court thereupon made a decision and order appearing in the record herein, based upon such Findings of Fact and Conclusions of Law so found by him, to which, and every part of which, in so far as it failed to direct judgment for the plaintiff, and in so far as it directed judgment dismissing the complaint, and in so far as it failed to direct judgment as requested by the plaintiff, the plaintiff, by its counsel, duly excepted, which exceptions were duly allowed by the Court.

Judgment was entered on said decision and order on June 26, 1908.

And now in furtherance of justice and that right may be done, the plaintiff presents the foregoing as the bill of his exceptions in this case and prays that the same may be settled and allowed and
184 signed and certified by the Judge, as provided by law.

Dated, June 26, 1908.

LORD, DAY & LORD,
Attorneys for Plaintiff.

Inasmuch as the matters produced and offered in evidence on said trial and the said exceptions so made to the rulings and decision of the said judgment do not appear on the record of the said cause in the Circuit Court of the United States for the Southern District of New York, the plaintiff has prepared and caused to be settled this bill of exceptions and so much thereof as appears herein as the record thereof in accordance with the statute in such case made and provided, the Court hereby signs and orders this bill of exceptions to be filed.

Dated, June 26, 1908.

C. M. HOUGH,
United States Judge.

We consent to the above settlement and signing of the foregoing bill of exceptions.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
United States Attorney,
Attorney for Defendant.

185 (Endorsed:) U. S. Circuit Court, So. District of New York.—Oceanic Steam Navigation Co. Ltd. Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 1—Bill of Exceptions.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

186 Circuit Court of the United States, Southern District of New York.

Action No. 1.

OCEANIC STEAM NAVIGATION CO., LTD., Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Assignment of Errors.

Plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred upon trial of the cause, to wit:

1. The Court erred in the admission of the evidence of Samuel S. Cortes given by deposition, which, in substance, related to the presence and duties of landing agents at Ellis Island.

2. The Court erred in the admission in evidence of the paper marked "Defendant's Exhibit A," being a Government Surgeon's Notice that an alien had been placed in the hospital at Ellis Island.

3. The Court erred in admitting the evidence of the said Samuel S. Cortes in relation to the custom of sending notices similar to defendant's Exhibit A.

187 4. The Court erred in the admission of evidence of the witness Samuel S. Cortes relating in substance to the practice of the plaintiff with reference to dealing with aliens at Ellis Island and with reference to the attitude towards the practice of the Government in reference to fines under Section 9 of the Immigration Act of 1903.

5. The Court erred in the admission of the evidence of the witness Samuel S. Cortes with reference to the practice of the plaintiff with reference to aliens who were the subject of the notices similar to defendant's Exhibit A.

6. The Court erred in the admission of the evidence of the defendant's witness Robert S. Crater, which, in substance, related to the checking of the names of the steerage passengers at Ellis Island in 1903, and the fact that the data of the Medical Division at Ellis Island was open to inspection by the steamship companies.

7. The Court erred in admitting the evidence of the defendant's witness William F. McDowell, which, in substance, related to the course of procedure, by which an alien at Ellis Island came into the Medical Division.

188 8. The Court erred in admitting the evidence of the defendant's witness, William F. McDowell, to the effect in sub-

stance that the reports of the Ellis Island Hospital were accessible to representatives of the steamship companies.

9. The Court erred in receiving in evidence the paper marked "Defendant's Exhibit B," being Government Surgeon's notice that the alien Necchi had been sent to the hospital at Ellis Island.

10. The Court erred in receiving in evidence the paper marked "Defendant's Exhibit C," being Government Surgeon's notice that the alien Van Geetson had been sent to the hospital at Ellis Island.

11. The Court erred in admitting the evidence of the defendant's witness, Byron H. Uhl, with reference to the right to examine records and documents, at Ellis Island and the accessibility of the reports, records and documents in reference to arriving aliens, to representatives of the steamship companies.

12. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit D," being Circular No. 58 of the Department of Commerce and Labor.

13. The Court erred in admitting in evidence the letter marked "Defendant's Exhibit E," being a letter addressed to the
189 United States Attorney at New York by Commissioner General Sargent.

14. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F[I]," being a letter from Acting Commissioner Sargent at New York to the Commissioner-General at Washington enclosing Doctor's certificate in the case of the alien, Van Geetson.

15. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F[II]," being a letter from the Secretary of the Department of Commerce and Labor to the Commissioner at Ellis Island, directing the payment of $100, by the Red Star Line in the case of the alien, Van Geetson.

16. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F[III]," being a letter from Acting Commissioner Murray to the Collector of the Port of New York certifying a fine of $100 for collection in case of the alien Van Geetson.

17. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G[I]," being a notice of liability for fine on account of bringing diseased alien to United States sent by Commissioner to American Line in the case of the alien, Nassif.

190 18. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G[II], being a verification of landing signed by the chief of the statistical division in the case of the alien, Nassif.

19. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G[III]", being a letter from a deputy collector to the Commissioner of Immigration at Ellis Island stating that on July 6, 1905, the fines had not been paid in the case of the alien, Nassif.

20. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G[IV]", being a letter from the Commissioner at New York to the Commissioner General at Washington, recommending a fine of $100, in the case of the alien, Nassif.

21. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G[V]", being a letter from the defendant to the

Commissioner stating that the deposit of $100, in the case of the alien Nassif had been made late.

22. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G^{VI}", being a letter from the Commissioner at New York to the Commissioner General stating that the
191 deposit of $100, in the case of the alien Nassif had been made late.

23. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G^{VII}", being a letter from an assistant Secretary of Commerce and Labor to the Commissioner of Ellis Island imposing fine of $100, in the case of the alien, Nassif.

24. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G^{VIII}," being a letter from the Commissioner at New York to the Collector of the Port certifying a fine of $100, for collection in the case of the alien, Nassif.

25. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G^{IX}," being a notice of the imposition of a fine of $100, sent by the Commissioner at New York to the American Line in the case of the alien, Nassif.

26. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H^{I}," being a letter from a Commissioner at New York to the Commissioner General recommending a fine of $100, in the case of the alien, Klaara.

27. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H^{II}," being a letter from the Commis-
192 sioner at New York to the Collector of the Port certifying a fine of $100, for collection in the case of the alien, Klaara.

28. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H^{III}," being a letter from the Secretary of Commerce and Labor to the Commissioner at Ellis Island directing the imposition and collection of a fine of $100, in the case of the alien, Klaara.

29. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I^{I}," being a letter from a Commissioner at New York to the Commissioner General submitting medical certificate in the case of the alien, Necchi.

30. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I^{II}," being a letter from the Secretary of Commerce and Labor to the Commissioner at Ellis Island directing the imposition and collection of a fine of $100, in the case of the alien, Necchi.

31. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I^{III}," being a letter from a Commissioner at New York to the Collector of the Port certifying a fine of $100, for collection in the case of the alien, Necchi.

193 32. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the subject of asking for a hearing and submitting evidence after the receipt of the paper marked "Plaintiff's Exhibit 4."

33. The Court erred in admitting the evidence of the plaintiff's

witness Arthur Lederer with reference to the hospital expenses of immigrants at Ellis Island.

34. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the receipt of reports similar in form to the Defendant's Exhibit C.

35. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit K," being a Government surgeon's notice that the alien, Nassif, had been sent to the hospital.

36. The Court erred in admitting in evidence the facts in the admission of plaintiff with reference to notices similar to defendant's Exhibit K and their being sent in the case of the alien, Johann Klaara.

37. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the attitude of the steamship companies in submitting evidence in case of aliens where a payment was demanded.

194 38. The court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the depositing of the moneys paid by the steamship companies pursuant to the demands of the Collector of the Port.

39. The Court erred in admission of the evidence of the plaintiff's witness Francis E. Hamilton with reference to the enforcement of the "twenty-four hour" provision contained in Plaintiff's Exhibit 4.

40. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the efforts made by the steamship lines to meet the *prima facie* case referred to in notices pursuant to which deposits were made.

41. The Court erred in admitting in evidence the admission of the plaintiff with reference to a notice similar to defendant's Exhibit K being sent in the case of the alien Hage Elias Faris.

42. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L[I]," being a letter from the defendant to the Commissioner at Ellis Island stating that a deposit of $100, had been received in the case of the alien, Faris.

43. The Court erred in admitting in evidence the paper
195 marked "Defendant's Exhibit L[II]," being a letter from a Commissioner at New York to the Commissioner General recommending a fine of $100, in the case of the alien, Faris.

44. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L[III]," being a medical certificate of the existence of trachoma in the case of the alien, Faris.

45. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L[IV]," being a letter from an assistant Secretary of Commerce and Labor to the Commissioner at Ellis Island directing a fine of $100, in the case of the alien, Faris.

46. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L[V]" being a letter from a Commissioner at New York to the American Line, stating that a fine of $100, had been imposed in the case of the alien, Faris.

47. The Court erred in admitting in evidence the admission of the plaintiff obtained in Paragraph 8 of the Statement of Facts with

reference to the alien Hage Elias Faris to the effect that the money paid by the plaintiff to the defendant had been paid by the latter into the United States Treasury.

48. The Court erred in admitting in evidence the admission of the plaintiff in Paragraph 9 of the Statement of Facts with reference to the alien Hage Elias Faris to the effect that the sum paid by the plaintiff to the defendant was held as a deposit.

196 49. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "First," that the imposition of the fine upon the plaintiff in the case of alien Johann Klaara was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

50. The Court erred in refusing to rule as requested in the Conclusions of Law submitted by the plaintiff numbered "Second," that the imposition of the said fine upon the plaintiff in the case of the alien Johann Klaara was in violation of the right of the plaintiff to a trial by jury in a criminal prosecution under subdivision 3 of Section 2 of Article III of the Constitution of the United States.

51. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Third," that the imposition of the said fine upon the plaintiff in the case of the alien Johann Klaara was in violation of the right of the plaintiff under the Sixth Amendment of the Constitution of the United States to a speedy and public trial by an impartial jury and to be

197 informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

52. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fourth," that the exaction of the sum of $100 from the plaintiff in the case of the alien Johann Klaara deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

53. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fifth," that the imposition of the said fine upon the plaintiff in the case of the alien Paolo Necchi was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

54. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Sixth," that the imposition of the said fine upon the plaintiff in the case of the alien Paolo Necchi was in violation of the right of the plaintiff to a trial by jury in a criminal prosecution under subdivision 3 of

198 Section 2 of Article III of the Constitution of the United States.

55. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Seventh," that the imposition of the said fine upon the plaintiff in the case of the alien Paolo Necchi was in violation of the right of the plaintiff under

the Sixth Amendment of the Constitution of the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

56. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eighth," that the exaction of the sum of $100 from the plaintiff in the case of the alien Paolo Necchi deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

57. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Ninth," that Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense
199 against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the liability to such fine or penalty.

58. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Tenth," that Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the guilt of the accused.

59. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eleventh," that Congress has no power under the Constitution of the United States to provide for the taking of the property of any person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such person and without a reasonable opportunity for such person to be heard.

60. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Twelfth," that under Section 9 of the Immigration Act of March 3, 1903, clearance cannot be refused unless a fine has been legally imposed for an offense against the provisions of said Act.

200 61. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Thirteenth," that Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other executive officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

62. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fourteenth," that Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

63. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fifteenth," that the plaintiff is entitled to a judgment for the recovery of the sum of $100 paid to the defendant in the case of the alien
201 Johann Klaara, with interest from the date of such payment.

64. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Sixteenth," that the plaintiff is entitled to a judgment for the recovery of the sum of $100 paid to the defendant in the case of the alien Paolo Necchi, with interest from the date of such payment.

65. The Court erred in refusing to direct judgment for the plaintiff.

66. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "I," that the collections of the said sums of One hundred dollars ($100) respectively, under the circumstances set forth in the findings, from the plaintiff by the defendant, were authorized by Section 9 of the Act of Congress approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States."

67. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "II," that the said section of the said Act is constitutional.

68. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "III," that the said several sums of One hundred dollars ($100) were constitutionally collected.

202 69. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "IV," that the payments of the said several sums of One hundred dollars ($100) were lawful conditions imposed upon the privilege of clearance.

70. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "V," that the defendant is entitled to judgment dismissing the complaint on the merits with costs.

71. The Court erred in directing judgment for the defendant and in directing the dismissal of the complaint of the plaintiff and in refusing to find the Conclusions of Law in favor of the plaintiff.

72. The Court erred in making the Finding of Fact numbered "Sixth" of the Requests to Find submitted by the defendant with reference to acts of representatives of the plaintiff at Ellis Island.

73. The Court erred in making the Finding of Fact numbered "Seventh" of the Requests to Find submitted by the defendant with reference to the knowledge of the plaintiff as to the probable imposition of fines.

74. The Court erred in making the Finding of Fact numbered "Eleventh" of the Requests to Find submitted by the defendant with reference to certain facts appearing to the satisfaction of
203 the Secretary of the Department of Commerce and Labor.

75. The Court erred in making the Finding of Fact numbered "Twenty-second" of the Requests to Find submitted by the de-

fendant with reference to certain facts appearing to the satisfaction of the Secretary of the Department of Commerce and Labor.

And the plaintiff aforesaid prays that the judgment of the Circuit Court may be in all respects reversed and that the said Circuit Court be directed to render judgment in the above entitled cause for the plaintiff for the full amount demanded by the complaint.

Dated, June 26, 1908.

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, So. District of New York—Oceanic Steam Navigation Co., Ltd., Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 1—Assignment of Errors.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun- 26, 1908. John A. Shields, Clerk.

204 United States Circuit Court, Southern District of New York.

OCEANIC STEAM NAVIGATION COMPANY LIMITED, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

Action No. 1.

Know all men by these presents:

That we, Oceanic Steam Navigation Company Limited, as principal, and the Fidelity and Deposit Company of Maryland, having an office and principal place of business for the State of New York at No. 2 Rector Street, in the Borough of Manhattan, in the City of New York, as surety, are held and firmly bound unto Nevada N. Stranahan in the full and just sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said Nevada N. Stranahan, or his certain attorneys, executors administrators or assigns; to which payment, well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our corporate seals. Dated the twenty-fifth day of June, Nineteen hundred and eight.

Whereas, Lately at a Circuit Court of the United States in a suit pending in said Court between Oceanic Steam Navigation Company Limited, Plaintiff, and Nevada N. Stranahan, Defendant, Action No. 1, a judgment was rendered against the said Oceanic Steam Navigation Company Limited, and the said Oceanic Steam Navigation Company Limited, having obtained a writ of error and filed a copy thereof in the Clerk's Office of said Court to reverse the
205 judgment in the aforesaid suit, and a citation directed to the said Nevada N. Stranahan citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the — day of ——, 1908, next.

Now, the condition of the above obligation is such, that if the said Oceanic Steam Navigation Company Limited shall prosecute said

writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

OCEANIC STEAM NAVIGATION COMPANY, LIMITED,

By ——— ———,

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

By HUGH M. ALLWOOD, *Attorney-in-Fact.*

Attest:

[SEAL.] JAMES R. KINGSLEY, *Attorney.*

Approved by:

———,

United States District Judge, Acting Circuit Judge.

206 STATE OF NEW YORK,
County of New York, ss:

On the 25th day of June, in the year 1908, before me personally came Hugh M. Allwood, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 3, of Chapter 720 of the Session Laws of the State of New York, for the year 1893. And the said Hugh M. Allwood further said that he is acquainted with James R. Kingsley, and knew him to be the Attorney of said Company; that the signature of the said James R. Kingsley, subscribed to the within instrument, was in the genuine handwriting of the said James R. Kingsley, and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said Hugh M. Allwood.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the Company in the City of Baltimore, State of Maryland, on the seventh day of February, A. D., 1906, on motion, it was unanimously

"*Resolved*, That Henry B. Platt, Vice-President, or James R. " Kingsley, Attorney, or Frank H. Platt, Edward T. Platt, Joseph A. " Flynn, and Hugh M. Allwood, Attorneys-in-Fact of this Company,

" in the State of New York, be, and each of them is, hereby author-
" ized and empowered to execute and deliver any and all bonds or
" undertakings for or on behalf of this Company, in its business of
" guaranteeing the fidelity of persons holding places of public or pri-
" vate trust and the performance of contracts other than insurance
" policies, and executing or guaranteeing bonds and other undertak-
" ings required or permitted in all actions or proceedings or by law
" required, and to attach thereto the seal of the Company, the same to
" be attested by the said James R. Kingsley, Attorney of the Com-
" pany, or by either one of the other persons above named, as occasion
" may require."

COUNTY OF NEW YORK, *ss:*

I, James R. Kingsley, Attorney, of the Fidelity and Deposit Company of Maryland, has compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original Resolution. Given under my hand and the seal of the Company, at the City of New York, this 25th day of June, 1908.

[SEAL.] JAMES R. KINGSLEY,
Attorney.

Fidelity and Deposit Company of Maryland.

Statement, March 31, 1908.

Resources.		Liabilities.	
Real Estate	$757,000 00	Capital Stock	$2,000,000 00
Stocks and Municipal Bonds	2,842,990 00	Surplus	2,421,185 45
U. S. Government, Railroad and other Bonds	1,467,750 00	Premium Reserve	799,509 62
British Consols	222,750 00	Reserve for Taxes (Accrued)	13,774 46
Net Premiums Due	218,638 81	Reserve for Contingent	
Cash in Bank, etc.	191,879 11	Claims	492,718 60
Plant, Equipment and Material, Contract at Amsterdam, N. Y.	28,944 30	Reserve for Claims Adjusted (Checks out)	2,764 09
Total	$5,729,952 22	Total	$5,729,952 22

STATE OF NEW YORK,
County of New York, ss:

James R. Kingsley, being duly sworn, says that he is the Attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said Company, as of March 31st, 1908, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 25th day of June, 1908.
[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

207 (Endorsed:) U. S. Circuit Court, Southern District of N. Y.—Oceanic Steam Navigation Company, Limited, Plaintiff, *vs.* Nevada N. Stranahan, Defendant, Action No. 1—Bond.—I approve of the within Bond and of the sufficiency of the Surety therein. Dated June 26, 1908. C. M. Hough, D. J.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

208 THE UNITED STATES OF AMERICA, *ss:*

To Nevada N. Stranahan, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington, on the 24th day of July 1908 next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein the Oceanic Steam Navigation Company, Limited, is plaintiff in error, and you are defendant in error, Action No. 1, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice done to the parties in that behalf.

Given under my hand at the City of New York, in the circuit and district above named this 26 day of June, in the year of our Lord, one thousand nine hundred and eight.

C. M. HOUGH,
District Judge of the United States for the Southern District of New York, Holding the Circuit Court.

209 [Endorsed:] E. & A. C. 2779. U. S. Circuit Court, So. District of New York. Oceanic Steam Navigation Company, Limited, Plaintiff against Nevada N. Stranahan, Defendant. Action #1. Citation. Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York. Service admitted. Henry L. Stimson, Att'y for Def't. June 26/08. U. S. Circuit Court, Southern District N. Y. Filed Jun- 26, 1908. John A. Shields, Clerk.

210 [Endorsed:] United States Supreme Court. Oceanic Steam Navigation Company Limited Pl'ff in Error *vs.* Nevada N. Stranahan Def't in Error.

Endorsed on cover: File No. 21,305. S. New York C. C. U. S. Term No. 509. Oceanic Steam Navigation Company, Limited, plaintiff in error, *vs.* Nevada N. Stranahan. Filed August 15th, 1908. File No. 21,305.

211 Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of New York.

October Term, No. 509.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the Clerk of the United States Supreme Court be and hereby is authorized and requested to correct the record herein so that the ruling now appearing at the close of the Findings of Fact submitted by the defendant, "All found. C. M. H.", shall appear opposite or underneath the words "Conclusions of Law" (page 24) and so that the ruling now appearing at the close of the Findings of Fact submitted by the plaintiff, "All refused. C. M. H.", shall appear opposite or underneath the words "Conclusions of Law", (page 30) and that said changes be made by the insertion of a slip or otherwise in the discretion of the Clerk of the Supreme Court; and it is further

Stipulated and agreed that such changes be made *nunc pro tunc* as the date of the filing of the record herein, namely, August 15, 1908.

LUCIUS H. BEERS,
Per D. E. P.,
WM. G. CHOATE,
Counsel for Plaintiff in Error.
H. M. HOYT,
Solicitor General,
Counsel for Defendant in Error.

212 [Endorsed:] File No. 21,305. Supreme Court U. S. October Term, 1908. Term No. 509. Oceanic Steam Navigation Co., L't'd, Pl'ff in Error, *vs.* Nevada N. Stranahan. Stipulation to correct record. Filed Dec. 2d, 1908.

213 142,086.

509—21305.

Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of New York.

October Term, No. 509.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the Clerk of the United States Supreme Court be and hereby is authorized and requested to add to the printed record herein a slip containing the opinion of Hon. Charles M. Hough, rendered herein, a certified copy of which is annexed herein, and it is further

Stipulated and agreed that such opinion be deemed to be and be in all respects a part of the record herein certified by the Clerk of the Circuit Court for the Southern District of New York.

LUCIUS H. BEERS,
Per D. E. P.,
WM. G. CHOATE,
Counsel for Plaintiff in Error.
H. M. HOYT,
Solicitor General,
Counsel for Defendant in Error.

214 [Endorsed:] Supreme Court of U. S. In error to the Circuit Ct. of U. S., Southern District of N. Y. Oceanic Steam Navigation Co., L't'd, Pl'ff in Error, against Nevada N. Stranahan, Def't in Error. October Term, No. 509. Stipulation.

215 Circuit Court of the United States, Southern District of New York.

Action No. 1.
Action No. 3.

INTERNATIONAL MERCANTILE MARINE CO.
vs.
NEVADA N. STRANAHAN.

Action No. 1.

OCEANIC STEAM NAVIGATION CO.
vs.
NEVADA N. STRANAHAN.

Statement by the Court.

The plaintiffs in these suits are steamship owners in the North Atlantic trade: the International Mercantile Marine Co. operating the "American" and "Red Star" lines, and the Oceanic Steam Navigation Co. the "White Star" line. Defendant is the Collector of Customs at this port.

The actions are brought to recover, as illegally exacted, various sums of $100 each, paid defendant as a condition of procuring clearance for certain of plaintiffs' ships.

Defendant's justification for such exaction is Sec. 9 of the Immigration Act of 1903, declaring it "unlawful for any person
216 including any transportation company * * * to bring into the United States any alien afflicted with a loathsome or with a dangerous contagious disease," and further prescribing that "if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien so brought * * * was afflicted with such disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such * * * transportation company * * * shall pay to the Collector of Customs * * * $100 for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such *fine* imposed upon *it* remains unpaid."

Plaintiff transportation Companies did bring to this country aliens afflicted with the proscribed diseases; it did appear to the satisfaction of the Secretary that the aliens were so afflicted when plaintiffs embarked them, and that their condition might have been detected by competent medical examination. Neither here, nor before any departmental officer, have plaintiffs disputed these facts; it being the essence of their demand that the existence of disease and the absence of proper inspection therefor, are alike immaterial, inasmuch as either the statute under which defendant acted, or the procedure under it, or both, are unconstitutional, and therefore ineffectual to prevent recovery of moneys exacted by defendant under the obvious

compulsion of stopping the voyage of a ship worth millions, until a paltry hundred was forthcoming.

The practice under Sec. 9 has not at all times been the same. Before January 25th, 1905, the procedure (in New York at all events) was to examine the immigrants and decide whether
217 any were obnoxious to the section; after which a notice was sent to the ship owner, informing him in substance that he would pay a fine of $100 per diseased immigrant, before his ship could clear; and this writing was the first communication of any sort given by the Department to the carrier on the subject.

After the date mentioned, written notice was first given the ship owner that diseased aliens had been discovered on a given ship and that the Secretary was satisfied that their condition could and should have been ascertained at the time and by the examination mentioned in Sec. 9; wherefore fourteen days were given wherein the persons notified might show cause why their ship should not be fined, and in the meantime clearance was granted only on deposit of $100 as security for the payment of each fine that might be ultimately imposed.

This change in practice was wrought by Circular 58, and some of the money now sued for was exacted before the circular, and some after.

So far as the evidence herein discloses, Circular 58 made no difference at all to these plaintiffs. Before the Circular date they unofficially knew as soon as inspection of immigrants — completed, how many fines they would be required to pay for any given ship; getting such information from their own representatives whose business took them regularly to Ellis Island; and after the Circular they had the same means of knowledge, plus a notice which told them nothing new, if their Ellis Island men were alert. But whether information of trouble came in one way or another, plaintiffs' course was the same, *i. e.*, to do nothing—so far as denying the Department's allegations was concerned.

218 These are, I believe, the facts shown by the evidence, all objections to which have been overruled, in order that everything in which counsel have based argument may be before the Appellate Court, and not because I deem it all material or relevant. On the contrary I do not think that the information gleaned by plaintiffs, through their own men, whether before or after Circular 58, bound them at all. For legal purposes the first knowledge they had of official purpose or decision, at any time, was the official notice. Further, I consider fourteen days are unreasonably short time within which to show cause, if the shipowners were unprepared with any information regarding the physical condition of their passengers on embarkation,—which was the state of the case, and which plaintiffs' counsel assume as a reasonable and lawful position on their clients' part.

The fact is that the carriers brought in the aliens on the chance that they would not be deported, and they now assert in effect that the "rules of the game" have not been observed in punishing them for taking the chance.

The cases have been tried without a jury. Formal findings will be signed in accordance with this statement and the following opinion:

William G. Choate and Lucius H. Beers, Esqs., for Plaintiffs.
Henry L. Stimson, U. S. Attorney, and W. T. Dennison and F. Frankfurter Esqs., for Defendant.

HOUGH, *D. J.*:

To declare unconstitutional, especially in a Court of first instance, an Act of Congress, is an exercise of judicial power warranted (in cases where no great and immediate financial loss is
219 threatening) only when the unconstitutionality exists beyond a rational doubt.

The practice of which the statute under consideration is an instance, *i. e.*, using a refusal of clearance as a means of extorting settlement of governmental claims, is nearly as old as the Union (R. S., Sec. 4205) and has for twenty years past been a part of our immigration system. (Acts Feb. 23, 1887, Sec. 8, Mch. 3, 1891, Sec. 10.) I am not advised of any previous attack upon the practice. It is not asserted that the exact form of words contained in Sec. 9 of the Act of 1903, is any older than that statute, but I believe that most of the battery of argument directed against it, might with equal force have been used against other Acts of Congress for many years back; and that fact alone would strongly incline me to leave the Constitutional question for the higher Courts;—pursuing the course illustrated by Spreckels Co. *v.* McClain, 113 F. R., 244.

I do not however incline to think the Act unconstitutional. For some years I have regarded it as harshly opposed to the spirit of the Constitution, and perhaps capable of use in derogation of earlier treaty rights of citizens of friendly nations;—yet entirely within the Congressional power of regulating foreign commerce. This predisposition has rendered the more necessary, careful study of the brief of distinguished counsel for plaintiffs: after which I am still unable to assent to their conclusions.

The proposition first advanced, going to the root of the whole matter, is that Sec. 9 creates a crime, viz., bringing into the country a diseased alien whose condition might in official opinion have been discovered at the port of embarkation; and for that crime provides a sanction, viz., a fine of $100.

From this premise, flows the conclusion that by constitu-
220 tional guaranty a jury trial is secured to those alleged to have committed the crime and incurred the fine.

The premise asserted, rests wholly on the use of the word "*fine*" in the section considered. A crime is a wrong which the Government "punishes in what is called a criminal proceeding in its own name" (U. S. *v.* Lee Huen, 118 F. R., at 455), and since the punishment meted out is a "fine," and a "fine" can be collected only in a "criminal proceeding," therefore that which the statute calls unlawful, must be a crime because it entails a fine.

This is putting on one word more than it can bear. Fine and penalty are frequently used interchangeably, as in Cunard Co. *v.* Stranahan, 134 F. R., 318, and the mere use of the word fine is not conclusive as to the nature of the action at law leading up to it (1 Bish. Crim. Law, 7th Ed., 17, n.).

The ingredients of a statutory crime are as well the sanction as the prohibition. An act may be *malum in se* and yet no crime even at common law; it may be *malum prohibitum*, yet if the machinery of the criminal law,—the method of enforcement called in the Lee Huen case the "criminal proceeding" be denied,—there is no crime. There being no common law offenses against the United States, a federal statute adding to the list of offenses must at once define it, denounce it and afford the appropriate remedy. It has been somewhat loosely said that a crime is an offense punishable through indictment, yet clearly it is a vital element of a crime, legally speaking, that its punishment be reachable through indictment or information.

It would I think puzzle the astutest attorney, to draw open to conviction an indictment on this section of the act. It would be necessary to accuse a *person*, yet the "fine" is imposed on a
221 "ship," while on conviction the Court would be obliged to direct the payment of $100 *to the Collector*, a method of collection hitherto unheard of on the criminal side.

Evidently Congress did not *intend* by this statute to add to the Criminal Code and it certainly denied to any crime it inadvertently seemed to create, the only proper method of enforcement. To construe the act reasonably, therefore, the $100 "fine" must be considered a penalty, and if suable at all, recoverable in debt (U. S. *v.* Banister, 70 F. R., 44).

Irrespective, however, of the argument just considered, plaintiffs urge that all proceedings under Sec. 9 are void, as depriving them of their property without due process of law,—the exactions prior to Circular 58 having been made without notice or opportunity to defend, and those after the Circular in accordance with a procedure not warranted by the Act itself. The sum of this contention is, that whether the Statute be hopelessly vicious or not, no constitutional method of enforcing its provisions has as yet been put in practice.

If this be possibly true, the preliminary enquiry is vital,—of what right or property have the plaintiffs been deprived? This question their counsel have answered thus:

"The right which the plaintiffs are here asserting is the right of ownership of their own funds. That is a constitutional right, and plaintiffs are here claiming that that constitutional right has been infringed by the taking of their property."

This statement, I am compelled to think compounds effect and cause,—it really begs the question. Truly the plaintiffs paid money under compulsion; but they did so to get clearance, and the real grievance, the *causa causans* of the train of events was the
222 refusal of clearance. If that was lawful and constitutional, everything was right enough; so that the logical questions are, (1) Had Congress a constitutional right to refuse clearance

under the circumstances and in the manner set forth in Sec. 9; and (if such right exists) (2) Was clearance refused in accordance with the terms of the statute?

As to the second query, it is enough to say that no substantial defect has been pointed out. The procedure before Circular 58 was in literal compliance with the statute, which provides for no notice, and that since the Circular while more merciful in form is at least no more drastic in effect than that of earlier date.

The first question requires consideration of the nature of clearance. The word means to satisfy the customs harbor dues and the like and obtain from the governmental authority of the port leave to depart, and in that sense was known to the language before the establishment of our Federal government (Oxford Dict. Murray, tit. clear and clearance). In the absence of statute clearance is but the gracious permission of the Sovereign to depart from a port into which without like permission contained in an entry, there was no right to come. In the United States this sovereign power is, by the Commerce clause of the Constitution, lodged in the federal government; and the privilege of clearance is granted, regulated or withheld by statute. It may be wholly suspended by embargo, of which domestic vessel owners cannot complain; and though it afford to foreign owners a *casus belli*, they are entitled to no judicial relief. It is only if and when the same power that can altogether withhold clearance, transforms the favor thereof into a statutory right
223 that vessel owners can complain at law. Hendricks *v.* Gonzalez, 67 F. R., 351.

In the present instance the very statute of which plaintiffs complain gives them the right of clearance; on payment of the sums they seek to recover. It was within Congressional power to refuse them clearance altogether. I do not think they can complain of getting it at a price.

The foregoing considerations, if well founded dispose of the cases at bar, but another line of argument has been presented, deserving statement.

As was said in Murray's Lessee *v.* Hoboken, &c. Co., 18 How., at 284, "there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination; but which Congress may or may not bring within the cognizance of the Courts of the United States, as it may deem proper."

That the regulation of immigration is one of these matters, and that Congressional action in withdrawing it almost wholly from the judicial domain is constitutional, has been decided in a line of cases too recent and familiar to need citation. Incidental to the regulation of immigrants, and absolutely necessary to efficiency of administration, is regulation of those who make immigrants possible. The importance of such regulation cannot be exaggerated, and in a city which is at once the immigrant gateway, and dumping ground need not be dilated upon.

Section 9 of the Act of 1903, is, in my judgment, a sanitary measure, necessary both for healthy immigrants and uninfected

Americans, and as such belongs eminently to that class of summary executive proceedings, transfer of which to the judicial
224 branch would "swamp the Courts" (Sing Tuck, 194 U. S., 170), and "defeat the object sought to be attained" (Sing Lee, 54 F. R., 334).

Every consideration leading to the judgments in Buttfield *v.* Stranahan, 192 U. S., 470, and Lawton *v.* Steele, 152 U. S., 133, makes to uphold the present statute. The destruction of inferior tea and unlawful fishnets, by summary process and without hearing is certainly no less an infraction of private right than is here complained of. Undoubtedly the power is great, and may be unjustly used, but if under this as under other sections of the Immigration Law, executive officers act under peril of suit or legal review, for abuse of discretion or malicious conduct;—those who bring diseased aliens into the country have as large judicial protection as have the aliens they bring;—in each instance as much as the nature of the case will (in Congressional opinion) permit.

The result I have reached is not consistent with the judgment directed on the trial of Cunard Co. *v.* Stranahan (*supra*). When that trial was had the more recent and important of the decisions committing immigration matters to executive officers had not been handed down, nor does it appear that the nature of clearance was argued; and in truth I find it difficult if not impossible to reconcile the direction of a verdict with the reported views on the demurrer. The safest plan is to regard only the reported decision, with which I agree, and in which I find nothing opposed to the views here advanced.

Let judgment for defendant be entered in each case.

August 24th, 1907.

C. M. HOUGH, *U. S. D. J.*

225 (Endorsed:) U. S. Circuit Court, S. D. N. Y.—Int. Merc. Mar. Co. *vs.* Stranahan.—Oceanic St. Nav. Co. *vs.* Stranahan.—Opinion, Hough, D. J.—8/24/07.—U. S. Circuit Court, Southern District N. Y., Filed Aug. 26, 1907, John A. Shields, Clerk.

A Copy.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

226 [Endorsed:] File No. 21,305. Supreme Court U. S. October Term, 1908. Term No. 509. Oceanic Steam Navigation Co., L't'd, Pl'ff in Error, *vs.* Nevada N. Stranahan. Stipulation of counsel & addition to record. Filed Dec. 2d, 1908.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 510.

INTERNATIONAL MERCANTILE MARINE COMPANY,
PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 16, 1906.

(21,366.)

(21,306.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 510.

INTERNATIONAL MERCANTILE MARINE COMPANY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 Circuit Court of the United States for the Southern District of New York.

No. 1. At Law.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

Petition for Writ of Error.

And now comes the International Mercantile Marine Company, the plaintiff herein, and says:

On or about the 25th day of June, 1908, the above named Circuit Court entered a judgment herein in favor of the defendant and against this plaintiff dismissing the complaint of the plaintiff in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear in detail from the assignment of errors which is filed with this petition.

2 Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

LORD, DAY & LORD,
Attorneys for Plaintiff, 49 Wall Street, New York, N. Y.

(Endorsed:) Circuit Court of the U. S., Southern District of N. Y.—International Mercantile Marine Company, Plaintiff in Error, against Nevada N. Stranahan, Defendant in Error.—Action No. 1—Petition for Writ of Error.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall St. New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

3 Circuit Court of the United States for the Southern District of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

This 26th day of June, 1908, comes the plaintiff by its attorneys and files herein and presents to the Court its petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was ren-

dered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of
4 error, upon the plaintiff giving bond according to law in the sum of $250.00, which shall operate as a supersedeas bond.

C. M. HOUGH,
United States District Judge
Holding the Circuit Court.

(Endorsed:) U. S. Circuit Court, So. District of N. Y.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 1—Order allowing writ.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—Service admitted. Henry L. Stimson, Atty. for Deft. Jun. 26/08.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

5 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Circuit Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you between International Mercantile Marine Company, plaintiff, and Nevada N. Stranahan, defendant, Action No. 1 a manifest error hath happened, to the great damage of the said plaintiff, International Mercantile Marine Company as by its complaint appears, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the City of Washington on the 24 day of July 1908 next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being in-
6 spected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States the 26 day of June, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States of America the One hundred and thirty second.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States
for the Southern District of New York.

[Seal of U. S. Circuit Court, South. Dist. New York.]

Allowed by
C. M. HOUGH,
United States District Judge.

7 UNITED STATES OF AMERICA.
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages, numbered from one to 197 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of International Mercantile Marine Company, Plaintiff in Error, *vs.* Nevada N. Stranahan, Defendant in Error, Action No. 1, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of August, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-third.

[Seal of U. S. Circuit Court, South. Dist., New York.]

JOHN A. SHIELDS, *Clerk.*

8 [Endorsed:] E. & Ac. 2780. U. S. Circuit Court Southern District of N. Y. International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant. (Action No. 1.) Writ of Error. Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York. Service Admitted. Henry L. Stimson, U. S. Att'y. June 26/08. U. S. Circuit Court, Southern District N. Y. Filed Jun. 26, 1908. John A. Shields, Clerk.

9 Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

To the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit:

STATE OF NEW YORK,
County of Franklin, ss:

Nevada N. Stranahan, petitioner and affiant, respectfully showeth that he was, prior to the commencement of the suit hereinafter referred to, Collector of the Customs for the Port and District of the City of New York, duly appointed according to law, and that on or about the 21st day of August, 1906, a suit was commenced against him by the International Mercantile Marine Company, in the Supreme Court of the County of New York, for or on account of acts done by him under the Revenue Laws of the United States, and as such Collector, and that he has been served with process in said suit in said Southern District, and that no trial has been had in said cause.

He therefore prays that in pursuance of the Act of Congress, in such case made and provided, the said cause so commenced in the

said Supreme Court may be removed therefrom and entered on the docket of this Honorable Court, and thereafter proceeded in as a cause originally commenced in this Court.

And he will ever pray, etc.

And being duly sworn, deposes and says, that the matters hereinbefore set forth are true to the best of his knowledge, information and belief.

NEVADA N. STRANAHAN.

Sworn to before me this 1st day of Sept. A. D. 1906.

WALTER J. MEARS,
Notary Public, Franklin County, N. Y.

I certify that, as counsel for the Petitioner, I have examined into the proceedings against him, and have carefully inquired into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

New York, Sept. 8th, 1906.

HENRY L. STIMSON,
U. S. Attorney, Counsellor of the said Circuit Court.

(Endorsed:) U. S. Circuit Court—International Mercantile Marine Company *vs.* Nevada N. Stranahan, Collector of Customs at the Port of New York.—Petition to remove cause.—Henry L. Stimson, United States Attorney, Attorney for Defendant.—U. S. Circuit Court, Southern District New York, Filed Sep. 8, 1906, John A. Shields, Clerk.

10 The President of the United States of America to the Judges of the Supreme Court of the County of New York, Greeting:

We, for certain reasons, being desirous that our Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, shall be certified of a certain cause, commenced before you against Nevada N. Stranahan, defendant, by International Mercantile Marine Company, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said Circuit Court, at the City of New York, on the 15th day of September, 1906, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said Court may cause to be further done thereupon what of right ought to be done.

Witness, Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 8th day of September, in the year one thousand nine hundred and six.

JOHN A. SHIELDS, *Clerk.*

HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court.—International Mercantile Marine Company *vs.* Nevada N. Stranahan.—Certiorari.—Henry L. Stimson, United States Attorney, Attorney for Defendant.—I hereby

certify, That on the 8th day of September, 1906, at the City of New York, in my District, I served the within Certiorari upon the within-named The Judges of the Supreme Court of the County of New York by exhibiting to T. F. Baldwin, Cashier to the County Clerk of New York County the within original, and at the same
11 time leaving with him a copy thereof. Wm. Henkel, United States Marshal, Southern District of New York.—Dated Sep. 8, 1906. U. S. Circuit Court, Southern District New York, Filed Sep. 8, 1906, John A. Shields, Clerk.

12 Supreme Court, County of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Summons.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, July 16, 1906.

LORD, DAY & LORD,
Plaintiff's Attorneys.

Office and Post Office address, No. 49 Wall Street, Borough of Manhattan, City of New York.

13 Supreme Court, County of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Complaint as to Causes of Action Nos. 16 *and* 17.

The plaintiff, complaining of the defendant, alleges:

For a First Cause of Action.

First. The plaintiff at all the times hereinafter mentioned was, and still is a corporation duly organized and existing by virtue of the laws of New Jersey, and was and now is engaged in the business of owning, maintaining and operating lines of steamships for

the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Second. The defendant at all the times hereinafter mentioned was and now is Collector of Customs at the Port of New York in the United States of America.

Third. Among the steamships so owned, maintained and operated by this plaintiff, at the times hereinafter mentioned, were the steamships New York, Philadelphia, St. Paul, St. Louis, Zeeland, Vaderland, Finland, Kroonland, and Westernland.

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which its said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule. Any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

14 For a 10th and Further and Separate Cause of Action.

The plaintiff repeats the allegations contained in the first, second, third and fourth paragraphs of the first cause of action set forth in this complaint, and further alleges:

69th. On or about the 22 day of December, 1903, said steamship Zeeland arrived at the Port of New York from foreign ports, pursuant to said schedule, having on board certain aliens who, as plaintiff is informed and believes, purposed immigrating into the United States of America, among whom was one Alfon vom Geetson, who had embarked on said steamship at a foreign port as a passenger bound for the Port of New York.

70th. After the said arrival of said steamship at the Port of New York, and before the 30 day of January, 1904, on which date said steamship was scheduled, as aforesaid, to sail from the Port of New York upon an outward bound voyage, the Secretary of the Department of Commerce and Labor of the United States of America, as plaintiff is informed and believes, without notice of any kind to the plaintiff or to any other person and without any proceeding in law or in equity and acting wholly without warrant or authority in law or in fact, and in violation of the rights of the plaintiff under the Constitution and laws of the United States, and in excess of any power in him vested, pretended and endeavored to impose a fine of one hundred dollars upon the plaintiff as the owner of said steamship, claiming to act under the provisions of Section 9 of an act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United

States" upon the alleged ground that it appeared to his satisfaction that the said alien above named, was at the time of his said embarkation upon the said steamship afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected by means of a competent medical examination at the time of such foreign embarkation and the said Secretary of the Department of Commerce and Labor, as plaintiff is informed and believes, did thereupon direct the defendant to refuse clearance to said steamship from the Port of New York until said sum of one hundred dollars so alleged to be a fine was paid.

71st. As plaintiff is informed and believes no judicial trial was ever held to establish the liability of said steamship, the plaintiff or of any other person for said fine or the payment thereof, nor was any suit or action to recover said alleged fine or sum of money ever instituted, commenced or prosecuted therefor by or on behalf of the United States or any officer thereof against said steamship, the plaintiff or any other person.

72nd. No notice of any description was ever given to the plaintiff or to any other person prior to the alleged imposition of said fine that the Secretary of the Department of Commerce and Labor, or the United States of America, or any officer thereof, had instituted or would institute any proceeding of any description to impose said alleged fine, nor had the plaintiff any knowledge of the institution of any such proceeding, and, if said Secretary or any other officer of the United States Government did conduct any proceeding, wherein they or any of them, pretended or endeavored to impose said fine, the plaintiff was never given any notice of such proceeding and had no knowledge thereof, and had no opportunity to be heard thereat.

73rd. On or about the 27 day of January, 1904, when the said steamship was at the Port of New York ready to depart therefrom on a voyage for foreign ports, pursuant to said schedule, the defendant, pretending to act under the order of the said Secretary of the Department of Commerce and Labor and as Collector of the Port of New York, unlawfully and unjustly demanded and exacted from this plaintiff the payment of said alleged fine of one hundred dollars as a condition of granting clearance to said steamship from the Port of New York, for said voyage, and refused to grant clearance unless such alleged fine was paid to him, which payment the plain-
15 tiff then made to the defendant as such collector involuntarily and under duress and only for the purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of its said schedule and from the failure of plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance. Such money so exacted from the plaintiff was received by the *plaintiff* as and for so much money had and received by him to the plaintiff's use.

74th. At the time of said exaction of said one hundred dollars from

the plaintiff as aforesaid it was the uniform practice of the defendant as Collector, as aforesaid, whenever informed by the Secretary of Commerce and Labor that he had imposed a fine under Section 9 of the said Act of March 3, 1903, upon a steamship, its owner or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such a practice by the defendant had been made known by him among steamship companies operating steamships between the Port of New York and foreign ports, including this plaintiff. At the time of the refusal to grant clearance and of the payment of said sum, as above set forth, to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum and the refusal of the defendant to grant clearance without such payment were illegal, and that all payments made by them, or any of them, to obtain such clearance were made involuntarily and under duress. Such exaction of said sum of one hundred dollars hereinabove set forth was one of a series of exactions made under similar circumstances by the defendant as such Collector from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

75th. If said exaction of said sum from the plaintiff by said defendant, as aforesaid, was authorized by Section 9 of the Act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States," then said Section of said act is unconstitutional and void, in that it deprives the plaintiff of its property without due process of law, in contravention of the Fifth Amendment of the Constitution of the United States of America, and also in that it denies to the plaintiff its rights under the Sixth Amendment to the Constitution of the United States of America, among which are those to a trial by jury, and to be informed of the nature and cause of the accusation against it in a criminal prosecution and otherwise as stated in said Amendment.

16 For a 17th and Further and Separate Cause of Action.

The plaintiff repeats the allegations contained in the first, second, third and fourth paragraphs of the first cause of action set forth in this complaint, and further alleges:

119th. On or about the 1 day of July, 1905, said steamship New York arrived at the Port of New York from foreign ports, pursuant to said schedule, having on board certain aliens who, as plaintiff is informed and believes, purposed immigrating into the United States of America, among whom was one Dolly G. Nassif who had embarked on said steamship at a foreign port as a passenger bound for the Port of New York.

120th. After the said arrival of said steamship at the Port of New York, and before the 8 day of July, 1905, on which date said steamship was scheduled as aforesaid to sail on a voyage from the Port of New York, the Commissioner of Immigration at the said

Port of New York, acting under instructions of the Secretary of the Department of Commerce and Labor, and alleging that a certificate of the examining Government Surgeon who examined said alien upon his said arrival at the said Port of New York indicated that a fine should be imposed upon said steamship or its owner under the provisions of Section 9 of an Act of Congress, approved March 3, 1903, and entitled, "An Act to Regulate the Immigration of Aliens into the United States," upon the alleged ground, as plaintiff is informed and believes, that the said alien above named was at the time of his embarkation upon said steamship afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected by means of a competent medical examination at the time of such foreign embarkation, notified the plaintiff that said steamship would be granted clearance papers if ready to sail and be allowed to proceed on her outward bound voyage upon condition that the plaintiff deposited with the Collector of Customs at the Port of New York within twenty-four hours after the receipt of such notice or if said steamship should sail sooner prior to her sailing schedule the sum of one hundred dollars as security for the payment of such fine, should it be imposed, and said Commissioner did thereupon, as the plaintiff is informed and believes, direct the defendant as such Collector to refuse clearance to plaintiff's said steamship unless such sum was so paid to the defendant as such Collector.

121st. On information and belief that at the time when said notice was given to the plaintiff there had been no proceeding, judicial or otherwise, wherein it had been established that the owner of said steamship or any other person was liable to a fine under the provisions of Section 9 of the said Act of Congress of March 3, 1903, and in directing the defendant of such collector to refuse clearance to plaintiff's said steamship unless said sum was so paid, as aforesaid, the said Secretary acted wholly without warrant or authority, in law or in fact, and in violation of the rights of the plaintiff under the Constitution and laws of the United States in excess of any power in him vested. If said Secretary or any other officer of the United States Government at any time prior to the exaction of the sum of one hundred dollars from the plaintiff as hereinafter alleged did conduct such proceeding wherein they or any of them pretended or endeavored to show that said steamship or its owner was or might be liable to said fine, under said provisions of said Act, the plaintiff was never given any notice of said proceeding and had no knowledge therof and had no opportunity to be heard thereat.

122nd. On or about the 7 day of July, 1905, when the said steamship was at the Port of New York ready to depart therefrom on a voyage for foreign ports, pursuant to said schedule, the defendant, pretending to act under the order of the said Secretary of the Department of Commerce and Labor and as Collector of the Port of New York, unlawfully and unjustly demanded and exacted from this plaintiff the payment of said one hundred dollars before any fine had been imposed pursuant to law, as a condition of granting clearance to said steamship for said voyage from the port of New York,

which payment the plaintiff then made to the defendant as such collector involuntarily and under duress and only for the
17 purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance. Such money so exacted from the plaintiff was received by the defendant as and for so much money had and received by him to the plaintiff's use.

123rd. At the time of said exaction of said one hundred dollars from the plaintiff, as aforesaid, it was the uniform practice of the defendant as Collector, as aforesaid, whenever informed by the Secretary of Commerce and Labor that it appeared to his satisfaction that a steamship was or might be liable to a fine under Section 9 of the said Act of March 3, 1903, to refuse clearance to such steamship until a deposit of one hundred dollars was made, and the adoption of such a practice by the defendant had been made known by him among the steamship companies operating steamships between the Port of New York and foreign ports, including this plaintiff. At the time of the refusal to grant clearance and of the payment of said sum, as above set forth, to obtain such clearance it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of defendant of said sum and the refusal of the defendant to grant clearance without such payment were illegal and that all payments made by them, or any of them, to obtain such clearance were made involuntarily and under duress. Such exaction of said sum of one hundred dollars hereinbefore set forth was one of a series of exactions made under similar circumstances by the defendant as such Collector from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

124th. Said payment of said one hundred dollars made by the plaintiff to the defendant, as hereinbefore alleged, was made under protest and said sum was received by the defendant subject to said protest of the plaintiff.

125th. If said exaction of said sum from the plaintiff by said defendant, as aforesaid, was authorized by Section 9 of the Act of Congress, approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States," then said Section of said act is unconstitutional and void, in that it deprives the plaintiff of its property without due process of law, in contravention of the Fifth Amendment of the Constitution of the United States of America, and also in that it denies to the plaintiff its rights under the Sixth Amendment to the Constitution of the United States of America, among which are those to a trial by jury, and to be in-

formed of the nature and cause of the accusation against it in a criminal prosecution and otherwise, as stated in said Amendment.

Alleges an affirmative defense that after the payment of the one hundred dollars as security, a fine was duly imposed and the money was paid over to the United States.

18 Wherefore, the plaintiff demands judgment against the defendant for the sum of Two hundred dollars ($200.); with interest on One hundred dollars ($100) thereof from January 27, 1904; with interest on One hundred dollars ($100) thereof from July 7, 1905; together with the costs of this action.

LORD, DAY & LORD,
Attorneys for Plaintiff.

Office and Post Office address, 49 Wall Street, New York, N. Y.

19 STATE, CITY AND COUNTY OF NEW YORK, *ss:*

P. A. S. Franklin being duly sworn, says: That he is the agent of the above named plaintiff; that the foregoing complaint is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that the plaintiff is a foreign corporation, and that no officer of the plaintiff is now within the United States.

P. A. S. FRANKLIN.

Sworn to before me this 16 day of July 1906.

[SEAL.] W. A. JEFFRIES,
Notary Public, County of New York and Kings.

[Endorsed:] Supreme Court, County of New York. International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant. Summons and Complaint. Action No. 1. Lord, Day & Lord, Plaintiff's Attorneys, 49 Wall Street, Borough of Manhattan, City of New York.

20 Circuit Court of the United States, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Amended Answer.

The defendant for an amended answer answers the complaint as follows, the answer being made upon information and belief, except that he admits, as of his own knowledge, the fact that at all the times in the complaint mentioned he was and now is Collector of Customs at the Port of New York, in the United States of America.

As to the Tenth Pretended Cause of Action.

I. As to paragraphs First, Second, Third and Fourth, which paragraphs are incorporated by reference into said Tenth Pretended Cause of Action, defendant admits the allegations therein contained.

II. As to paragraph 69th, defendant admits the allega-
21 tions therein contained.

III. As to paragraph 70th, defendant admits the allegations therein contained, except that he denies,

(1) that he acted without notice to the plaintiff,
(2) without notice to any other person,
(3) without warrant or authority in law,
(4) without warrant or authority in fact,
(5) in violation of any rights of the plaintiff,
(6) in excess of any power in him vested.

Further referring to the allegations of the said paragraph, defendant alleges that he did in fact, and lawfully, impose upon the plaintiff the fine or penalty which he is alleged to have "pretended and endeavored to impose," and that the ground of the said action referred to as "the alleged ground" thereof, was the true ground thereof.

IV. As to paragraph 71st, defendant admits the allegations therein contained.

V. As to paragraph 72nd, defendant denies the allegations, and each of them, therein contained except that he admits that no notice was given that there had been instituted or would be insti-
22 tuted any Court proceeding.

VI. As to paragraph 73rd, defendant denies the allegations and each of them therein contained, except that he admits and alleges that on or about the date alleged, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, he lawfully and justly demanded and required from the plaintiff the payment of a fine or penalty of One Hundred Dollars, as a condition of granting clearance to said steamship upon its next outward voyage from the Port of New York, pursuant to its schedule, and stated, among other things, that he would refuse to grant clearance for said next outward bound voyage unless said fine or penalty was paid to him, which payment the plaintiff then made to the defendant as such Collector.

VII. As to paragraph 74th, defendant denies the allegations and each of them therein contained, except that he admits and alleges that it was his practice at all times to act fully in accordance with the law.

VIII. As to paragraph 75th, defendant denies the allegations and each of them therein contained, and refers to the Constitution, the law and the statutes.

23 As to the Seventeenth Pretended Cause of Action.

The defendant repeats its answer to paragraphs First, Second, Third and Fourth of the First pretended cause of action, which

paragraphs are incorporated by reference into said Seventeenth pretended cause of action.

IX. As to paragraph 119th, defendant admits the allegations therein contained.

X. As to paragraph 120th, defendant admits the allegations therein contained, but he further alleges that the certificate referred to in the said paragraph was in fact what he alleged it to be and was founded in fact upon the ground alleged, and the defendant refers to the original paper or papers concerned.

XI. As to paragraph 121st, defendant denies the allegations and each of them therein contained, except that he admits that there had been no Court proceeding.

XII. As to paragraph 122nd, defendant denies the allegations and each of them contained, except that he admits and alleges that on or about the date alleged, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, he lawfully and justly demanded and required from the plaintiff the payment of a fine or penalty of
24 One hundred dollars, as a condition of granting clearance to said steamship upon its next outward voyage from the Port of New York, pursuant to its schedule, which payment the plaintiff then made to the defendant as such Collector, filing thereupon a formal objection, as to the effect and character of which the defendant refers to the original thereof.

XIII. As to paragraph 123rd, defendant denies the allegations and each of them therein contained, except that he admits and alleges that it was his practice at all times to act fully in accordance with the law.

XIV. As to paragraph 124th, defendant admits the allegations therein contained, except

(1) he denies that the payment was made as alleged in the preceding portions of the said pretended cause of action, and except

(2) he denies that any protest was made by reason of any such facts as alleged in the preceding portions of the said pretended cause of action, and except

(3) he denies that said sum was received by him subject to any protest.

XV. As to paragraph 125th, defendant denies the allegations and each of them therein contained, and refers to the Con-
25 stitution, the law and the statutes.

For a second Defense to the said Seventeenth Pretended Cause of Action.

XVI. Defendant alleges that after the payment to him of the said sum as security, a fine or penalty for the said amount was duly and lawfully imposed upon the plaintiff, and thereupon he duly and lawfully paid over to the United States of America the said sum, which theretofore he duly and lawfully had so held as security.

HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

Office and P. O. Address, Room 50, P. O. Building, Borough of Manhattan, New York City.

STATE OF NEW YORK,
County of New York, ss:

Nevada N. Stranahan, being duly sworn, deposes and says: That he is the defendant above-named; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he
26 believes it to be true.

NEVADA N. STRANAHAN.

Sworn to before me this 11th day of March, 1907.

FRANCIS B. ANTZ.
[SEAL.] *Notary Public, N. Y. County.*

27 Circuit Court of the United States, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

It is hereby stipulated that the issues in the above entitled action be tried by the Court without a Jury, the right to a trial by a Jury being expressly waived by both parties to this action; and it is

Further stipulated that the trial of the issues in the above entitled action be set down for trial subject to the convenience of the Court on Monday, April 29, 1907. Dated April 5, 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
U. S. Att'y, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District New York. Filed Apr. 5, 1907, John A. Shields, Clerk.

28 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Post Office Building in the Borough of Manhattan, City of New York, on the 23rd day of April, 1907.

Present: Hon. Charles M. Hough, District Judge.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Upon reading and filing the annexed affidavit of Darius E. Peck, verified April 22, 1907, and the annexed consent of the attorneys of the parties to this action, it is

Ordered that this action be divided into two several actions, one of which shall be known as Action No. 1, and shall contain the Tenth

and Seventeenth causes of action set forth in the complaint herein, and the other to be known as Action No. 2, to contain the other causes of action set forth in the complaint herein, this severance to be without prejudice to the proceedings already had in this action.

Enter.

C. M. HOUGH,
U. S. District Judge.

29 United States Circuit Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

It is hereby consented that the foregoing order severing this action may be signed and entered without further notice.

Dated, April 22, 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
Attorney for Defendant.

30 United States Circuit Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

STATE OF NEW YORK,
County of New York, ss:

Darius E. Peck, being duly sworn, says:

That he is an attorney in the office of Lord, Day & Lord, the attorneys for the plaintiff in the above entitled action and is familiar with the proceedings had therein.

That the complaint contains twenty-six causes of action. The defendant has answered the causes of action therein contained numbered Ten and Seventeen. The time of the defendant to plead to, or move with respect to, the other causes of action set forth in said complaint has been extended until twenty days after notice to plead or move.

This affidavit is made in support of an application to sever the above entitled action into two several actions, one containing the Tenth and Seventeenth causes of action, set forth in the complaint herein, and the other containing the remaining causes of action, set forth in the complaint herein.

DARIUS E. PECK.

Sworn to before me this 22nd day of April, 1907.

CHARLES D. MILLER.
Notary Public, Suffolk Co.

Cert. Filed New York Co.

(Endorsed:) U. S. Circuit Court, Southern Dist. of New York.—International Mercantile Marine Company, Plaintiff, ag'st Nevada N. Stranahan, Defendant.—Order of Severance, Consent and Affidavits.—Lord, Day & Lord, Att'ys for Plaintiff, 49 Wall St. New York.—U. S. Circuit Court, Southern District N. Y., Filed Apr. 23, 1907, John A. Shields, Clerk.

31 United States Circuit Court, Southern District of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

The defendant submits the following proposed findings of fact, which it deems established by the evidence herein, and the following proposed conclusions of law, upon which it requests the Court to rule:

Findings of Fact.

First. The plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and existing by virtue of the laws of the State of New Jersey, and was and now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Found. C. M. H.

Second. The defendant, at all the times hereinafter mentioned, was Collector of Customs at the Port of New York in the United States of America.

Found. C. M. H.

32 Third. Among the steamships so owned, maintained and operated by this plaintiff at the times hereinafter mentioned were the steamships "Zeeland" and "New York."

Found. C. M. H.

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which the said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule, and any interruption and disarrangement of said schedule would have seriously inter-

Found. C. M. H.

fered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

Fifth. On the respective days of arrival of the respective aliens mentioned in the complaint, the surgeon in charge at Ellis Island sent notices which were addressed to and received by the plaintiff and which reported that the respective aliens had been placed in the hospital with a disease of the eyes.

Found. C. M. H.

33

Sixth. At all the times mentioned in the complaint, the plaintiff had in Ellis Island its own representative whose business took him regularly there, and who inspected and had free access to the records of the hospital to which the said aliens were removed and to the other records at Ellis Island (including the minutes of the Special Inquiry Board which passed upon the right of the aliens to land and denied that right) and who could have reported to the plaintiff the sending of the respective aliens to the hospital, if they had so desired, or so been instructed by plaintiff.

Found as Amended. C. M. H.

Seventh. From the surgeon's notices above mentioned and from the plaintiff's representative above mentioned and from the previous impositions of penalties the plaintiff knew or might have ascertained that the penalties prescribed under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect of the said aliens.

Found as amended. C. M. H.

Eighth. At none of the times referred to in the complaint, and at no other time did the plaintiff ask for any hearing or offer to submit any evidence or ask for any postponement of imposition of penalty or for any extension of time for obtaining or submitting evidence. Nor did it at any time send, or ask leave to send, a physician to Ellis Island for examination of any alien, which was always permitted.

Found as amended. C. M. H.

34

Ninth. On or about December 22, 1903, said steamship "Zeeland" arrived at the Port of New York from the Port of Antwerp, after a voyage of at least eight days, pursuant to said schedule, having on board certain aliens who purposed immigrating into the United States of America, among whom was Alfons Van Geetson, who had embarked on said steamship at said Port of Antwerp as a passenger bound for the Port of New York.

Found. C. M. H.

Tenth. On December 24, 1903, the Acting Commissioner of Immigration at Ellis Island transmitted to the Commissioner General of Immigration for the action of the Secretary of Commerce and Labor, a copy of the medical certificate which had been made by the surgeon in charge at Ellis Island, together with the following letter which correctly stated the contents of the said certificate:

Found. C. M. H.

"DEF'T'S EX. F 1."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *December* 24, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: I herewith forward for such action as the Secretary of Commerce and Labor shall deem proper, copy of medical certificate, dated December 23, 1903, of Surgeon-in-Charge showing that Alfons Van Geetson, who arrived December 22 by S. S. "Zeeland" (Red Star Line) was suffering from trachoma at the time of foreign embarkation, and that its existence could have been detected at such time.

Respectfully,
(Signed) JOSEPH MURRAY,
Acting Commissioner.

(Inclosure No. 5149.)

(Endorsement:) No. 19636. Dec. 24/03. Subject: ——. To Commissioner-General of Immigration transmitting doctor's certificate in case of Alfons Van Geetson.

Eleventh. On December 26, 1903, the Secretary of Commerce and Labor sent to the Commissioner of Immigration at Ellis Island, the following letter:

Found. C. M. H.

"DEF'T'S EX. F II."

No. 43213.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
WASHINGTON, *December* 26, 1903.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: In reply to your letter No. 19,636 of December 24, 1903, and in view of the facts submitted therewith, it appears to my satisfaction that the alien Alfons Van Geetson, a native of Belgium, ex. S. S. "Zeeland" December 22, 1903, was afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected at said time.

I therefore direct that the Red Star Line, owners of said vessel, pay to the Collector of Customs of the District of New York, being

the port at which said vessel arrived, the sum of $100 in con-
36 formity with Section 9 of the Act approved March 3, 1903, and that you certify this sum to said Collector for collection.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*
Per S.

WVL

(Endorsement:) 19,636. Secretary of Commerce & Labor. Dec. 26, 1903. Imposing $100.00 fine case of Alfons Van Geetson. S. S. Zeeland Red Star Line. United States Immigration Service. Dec. 27 10-32 A. M. 1903. Chief Clerk's Office, Ellis Island, N. Y. H.

The facts in this letter stated to have appeared to the satisfaction of the said Secretary, did so appear to his satisfaction.

Twelfth. On December 28, 1903, the Acting Commissioner of Immigration sent the following letter to the
Found. C. M. H. Collector of the Port of New York.

"DEF'T'S EX. F III."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *Dec.* 28, 1903.

Collector of the Port, New York City.

SIR: The Secretary of Commerce and Labor has imposed upon the Red Star Line a fine of $100, because he is satisfied, in accordance with certificate dated December 23, 1903, of U. S. Marine
37 Hospital Surgeon in Charge that the alien Alfons Van Geetson, who arrived by S. S. "Zeeland" December 22, 1903, was afflicted at the time of foreign embarkation with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 43213 of December 26, 1903, I hereby certify to you this fine for collection in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,
(Signed) JOSEPH MURRAY,
Acting Commissioner.

VL

(Blank endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of enclosures —.

Thirteenth. On December 29, 1903, the Solicitor to the Collector of the Port of New York addressed to the
Found. C. M. H. Master of the said steamship "Zeeland," care of the plaintiff, a letter which was received by the plaintiff on or about its date, as follows:

"PL'FF'S EX. 3."

United States Customs Service.

PORT OF NEW YORK, *Dec.* 29, 1903.

Office of the Collector, Law Division, Solicitor to the Collector.

Master, S. S. "Zeeland," c/o Red Star Line, Empire Building Manhattan.

38 SIR: The Secretary of Commerce & Labor has imposed a fine of one hundred dollars upon the S/S "Zeeland" because it is satisfied that the alien Alfons Van Geetson, who arrived on the 22nd instant, was at the time of foreign embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law the vessel can not clear from this port until this fine is paid.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector.

3d class $100
Cash ticket JF
Man. 326
Ticket No. 32773

Cashier's Office
paid
Jan. 27 1904
Custom House N. Y.

Fourteenth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity.

Found. C. M. H.

Fifteenth. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Sixteenth. On January 27, 1904, when said steamship "Zeeland" was at the Port of New York, ready to depart therefrom on a voyage for foreign parts, pursuant to its said schedule,

Found. C. M. H.

39 the defendant, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of said fine of One hundred dollars ($100), as a condition of granting clearance to said steamship from the port of New York for said voyage, and refused to grant clearance to said vessel unless said fine was paid to him, which payment the plaintiff then made to the defendant, as such Collector, only for the purpose of obtaining clearance for said steamship and avoiding the serious

loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without clearance.

Seventeenth. At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of the Department of Commerce and Labor that a fine had been imposed under Section 9 of
Found. C. M. H. the Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse
40 clearance to such steamship until said fine was paid, and the adoption of such practice by the defendant had been made known by him, to and among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Eighteenth. At the time of the refusal to grant clearance, and of the payment of said sum of One hundred
Found. C. M. H. dollars ($100) to obtain the same, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them, or any of them, to obtain such clearance, were made involuntarily and under duress.

Nineteenth. Said exaction of said One hundred dollars ($100) was one of a number of exactions under similar circumstances made by the defendant, as such Collector, from said
Found. C. M. H. steamship companies, and the protests of all of such companies against such exactions had
41 at all times been disregarded by him.

Twentieth. On or about January 25, 1905,
Found. C. M. H. the Secretary of the Department of Commerce and Labor issued a paper known as Department Circular No. 58, with the contents of which the plaintiff forthwith became familiar. This circular prescribed the method of procedure for the collection of fines for offences against the provisions of Section 9 of the Immigration Act of March 3, 1903, and was in terms as follows:

"Procedure for Imposition of Fines on Account of Bringing Diseased Aliens to the United States.

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

Bureau of Immigration.

JANUARY 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of section 9 of the immigration act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathsome or dangerous
42 contagious disease shall state in terms whether, in his judgment, the 'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.'

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph hereof, the commissioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner, or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz:

Department of Commerce and Labor, Immigration Service.

Office of ——— ———,
Port of ——— ———,
——— —, 190–.

To ——— ———, ——— of the steamship ——— ———:
(Master, agent, owner, or consignee.)

In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of Alien: —— —— Steamship: —— —— Disease: —— ——

(Signature) —— ——,
(Title) —— ——.

Received the above notice —— —, 190–, at —— —— M.
(Witness) —— ——. —— ——.

11-1640

43 The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the triplicate to be delivered to the collector of customs, who will withhold clearance papers until the deposit is made.

3. Deposit.—The special deposit of $100, required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above-described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical certificate and duplicate notice, in order that such action may be taken as the evidence requires.

4. Stay of Action.—If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2 of this circular, the deposit of $100, has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded, together with the certificate of the examining surgeon, to the Commissioner-General of Immigration, for presentation to the Secretary of Commerce and Labor, by the said commissioner or inspector in charge, who shall at the same time present his written views as to whether the said fine should be imposed. If no evidence is sub-

mitted prior to the expiration of the said fourteen days, then said commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

44 5. Final Proceedings.—Upon receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such data as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100, deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640

V. H. METCALF, *Secretary.*"

Twenty-first. On or about July 1, 1905, said steamship "New York," belonging to the plaintiff, arrived at the Port of New York from the Port of Southampton, England after a voyage of at least seven days, pursuant to its said schedule, having on board certain aliens who purposed immigrating into the United States, among whom was one Dolly G. Nassif, who had embarked on said steamship at said Port of Southampton as a passenger bound for the Port of New York.

Found. C. M. H.

Twenty-second. On or about the 5th day of July, 1905, the Commissioner of Immigration of the Port of New York caused the following notice to be sent to the plaintiff which was received by the plaintiff on the day of its date.

Found. C. M. H.

Original.

Notice of Liability for Fine on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

45 (Prepare in triplicate.) 7/6

OFFICE OF COMMISSIONER,
PORT OF ELLIS ISLAND, N. Y. H., *July* 5, 1905.

Imm'ig Fine
127 W.

To American Line, Owners of the Steamship "New York," July 2, 1905.

(Master, agent, owner, or consignee.)
9 Broadway, New York City.

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining

surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship:	Disease:
Dolly G. Nassif.	"New York" 127.	Trachoma.

ROBERT WATCHORN,
Commissioner.

N.

Twenty-third. On July 6th, 1905, the Special Deputy Collector of the Port of New York transmitted to the Commissioner of Immigration at Ellis Island, a letter of which the following is a copy:

Found. C. M. H.

46 "DEF'T'S EX. G III.

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *July* 6, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: Referring to notices of liability for fines under section 9, Act of March 3, 1903, in the case of the S. S. "Bluecher"; alien passenger Ludwig Wieczorck: S. S. "Umbria"; alien passenger John Stupadas: and S. S. "New York"; alien passengers Elias Bashara; Dolly G. Nassif; and Joseph Rizk, which notices were received by the steamship companies on July 5, I have to state that the fines referred to therein have not been deposited with this office up to 4:30 p. m. this day, July 6th.

Respectfully,
(Signed) ——— ———,
Special Deputy Collector.

Copy.

Twenty-fourth: On July 7th, 1905, the said Commissioner of Immigration at Ellis Island, New York, transmitted to the Commissioner General of New York at Washington, D. C., a letter of which the following is a copy:

Found. C. M. H.

"DEF'T'S EX. G IV."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 7, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

47 SIR: I have the honor to inclose, for your consideration, two certificates dated July 3, 1903, by the P. H. and M. H. Surgeon in Charge here, to the effect that Elias Bashara and Dolly G. Nassif, ex. S. S. "New York", July 2, 1905, have trachoma, a dangerous, contagious disease; that said aliens were afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time.

I also inclose a duplicate notice served on the line at 3.55 p. m. July 5, 1905, in accordance with Department Circular 58. The Collector informs me in a letter dated the 6th instant, that the $200 deposit required by said circular to be made as a condition precedent to the line's right to submit additional evidence, has not been made within the prescribed period of 24 hours.

I therefore recommend that the fine of $100 in each case be imposed.

Respectfully,

——— ———,
Commissioner.

SMR. Incl. 3936.

(Blank endorsement:) Department of Commerce and Labor Immigration Service. Office of the Commissioner. New York, N. Y., ——— —, 190–. ——— ———, Commissioner. Subject: ———. No. of Inclosures ———.

Found. C. M. H.

Twenty-fifth. On July 7th, 1905, the Collector of the Port of New York transmitted to the Commissioner of Immigration at Ellis Island, New York, a letter of which the following is a copy:

48 "DEF'T'S EX. G V."

EB.

Office of the Collector.

UNITED STATES CUSTOMS SERVICE. M.
PORT OF NEW YORK, *July* 7, 1905.

Hon. Robert Watchorn, Commissioner of Immigration.

SIR: I have to advise you of the deposit with this office today of the sum of three hundred dollars by the American Line, owners

of the S. S. "New York"; for which sum the vessel has become liable under section 9, act of March 3, 1903 in the case of the alien passengers, Elias Bashara; Joseph Rizk; and Dolly G. Nassif; also of the deposit of the sum of one hundred dollars in the case of the S. S. "Umbria"; alien passenger, John Stupadas.

Respectfully,

N. N. STRANAHAN, *Collector.*
J. E. H.

(Endorsement:) 19636. N. Y. Jul- 7, 1905. Collector of Customs Advises deposits made in case Elias Bashara, Jos. Rizk & Dolly G. Nassif s/s New York & John Stupadas s/s Umbria. Referred to Law Clerk (E. R.). Delivered 1.05 M A Jul- 8 8.53 A. M.

Found as Amended. C. M. H.

Twenty-sixth. On July 7th, 1905, the plaintiff deposited with the Collector of the Port of New York the sum of One Hundred Dollars, making the said deposit involuntarily and under duress for the sole purpose of avoiding the serious loss and damage which would result from the interruption and dis-
49 arrangement of its schedule of sailings and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamships, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance.

Found. C. M. C.

Twenty-seventh. At the time of said payment the plaintiff filed with the defendant the following written protest:

John C. Ryer. Edward T. Coons.

Cable Address
"Architrave"
Perry, Ryer & Co.,
Customs & Insurance Brokers and Forwarders.

Boston Office, Stone & Downer Co., 131 State Street.

Phil. Office, E. H. Bailey & Co., 406 Library St.

Import Agents N. Y. O. & W. R. R., Ontario Dispatch, and Ontario & Michigan Central Line.

Correspondents in all parts of the World. 66, 68 and 70 Beaver St. Coffee Exchange.
Telephone, 392 Broad.

NEW YORK, *July* 7, 1905.

Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $300, imposed on it under Section 9 of the Act of
50 March 3rd, 1903, for bringing into the United States the following passengers:

Dolly G. Nassif,
Elias Bashara,
Joseph Rizk.

on the Steamship "New York" arrived July 2nd, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

INTERNATIONAL MERCANTILE MARINE CO.,
JOHN C. RYER, *Att'y.*"

Twenty-eighth. Found. C. M. H.

On July 8th, 1905, the Commissioner of Immigration at Ellis Island transmitted to the Commissioner General of Immigration, a letter of which the following is a copy:

"DEF'T'S EX. G VI."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 8, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to refer to my letters No. 19,636, of yesterday, transmitting medical certificates in the cases of John Stupadas, ex. S. S. "Umbria," Elias Bashara and Dolly G. Nassif, ex. S. S. "New York," July 2, 1905, reporting that the Collector had informed me that the deposit required by Circular No. 58, had not been made within the prescribed period of 24 hours from service of notice on the line.

I have this morning received a further letter from the Collector, stating that the deposit of $100 was made yesterday by the Cunard Line and $200 by the American Line on account of these cases.

51 Possibly in view of this you may desire to allow fourteen days within which to file additional evidence.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

SMR.

(Blank endorsement:) Department of Commerce and Labor, Immigration Service, Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of Inclosures —.

Twenty-ninth. Found. C. M. H.

On July 8th, 1905, the Secretary of the Treasury transmitted to the Commissioner of Immigration at Ellis Island, a letter of which the following is a copy:

"DEF'T'S EX. G VII."

No. 48969.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex. S. S. "New York" July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to
52 my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

Respectfully,

LAWRENCE O. MURRAY,
Assistant Secretary.

F. W.

WVL.

(Endorsed:) 19636. Secretary of Commerce & Labor. Jul- 8, 1905. Imp. $200 fine case of Elias Bachasa & Dolly G. Nassif ex. New York, July 2, 1905. Referred to Law Clerk (E. I.). Delivered 12.25 M A Jul- 10 8.31 A. M.

The facts in this letter stated to have appeared to the satisfaction of the Secretary did so appear to his satisfaction.

Thirtieth. On July 11th, 1905, the Secretary of the Department of Commerce and Labor transmitted to the
Found. C. M. H. Collector of the Port of New York, a letter of which the following is a copy:

53 "DEF'T'S EX. G VIII."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *July* 11, 1905.

Hon. N. N. Stranahan, Collector, Port of New York, New York City.

SIR: I am in receipt of a letter from the Assistant Secretary of Commerce & Labor, of which the following is a copy:

No. 48969.

WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19,636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex. S. S. "New York," July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200., as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

Respectfully,
(Signed) LAWRENCE O. MURRAY,
Assistant Secretary.

WVL.

Pursuant to the foregoing direction I hereby certify to you the sum of $200. for collection from the American Line, owners of the S. S. "New York."

Respectfully,
(Signed) ROBERT WATCHORN,
Commissioner.

G.

(Endorsement in blank same as on Ex. G VI.)

54 Thirty-first. On July 12th, 1905, the Commissioner of Immigration at Ellis Island New York, transmitted to the plaintiff a letter of which the following is a copy:

Found. C. M. H.

"DEF'T'S EX. G IX."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 12, 1905.

American Line, 9 Broadway, New York City.

SIRS: After careful consideration of all the facts relating to the aliens Elias Bashara and Dolly G. Nassif, who arrived on the steamship "New York," July 2, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100. has been imposed in each case, and the Collector of the Port has been so informed. This action has been taken in conformity with Section 9 of the Act approved March 3, 1903.

This notice is sent for your information.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

G.

(Endorsed in blank the same as Ex. G VI.)

Found. C. M. H.

Thirty-second: Thereupon the defendant paid over into the Treasury of the United States the sum of $100 so deposited with him.

Found. C. M. H.

Thirty-third. At the time of said deposit of said One Hundred dollars ($100) by the plaintiff to the defendant, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Commissioner of Immigration that it appeared to his satisfaction that a steamship, or its owner, was, or might be, liable to a fine under Section 9 of said Act of March 3, 1903, to refuse clearance to such steamship until a payment of One hundred dollars ($100) was made to him, and the adoption of such a practice by the defendant had been made known by him to and among the steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Found. C. M. H.

Thirty-fourth. At the time of the refusal to grant clearance to said steamship, and of the payment of said sum of One hundred dollars ($100) to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for said sum and the refusal of the defendant to grant clearance without such payment, were illegal.

Thirty-fifth. Said exaction of One hundred dollars ($100) was one of a number of exactions made under similar circumstances by the defendant, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Found. C. M. H.

Found as amended. C. M. H.

56 Thirty-sixth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity.

Found. C. M. H.

Thirty-seventh. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Thirty-eighth. No part of said sums so paid to the defendant by the plaintiff in the cases of said aliens, Alfons Van Geetson and Dolly G. Nassif, has been repaid to the plaintiff.

All found. C. M. H.

Conclusions of Law.

I. The collections of the said sums of One hundred dollars ($100) respectively, under the circumstances hereinbefore set forth, from the plaintiff by the defendant, were authorized by Section 9 of the Act of Congress approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States."

II. The said Section of the said Act is constitutional.

III. The said several sums of One hundred dollars ($100) were constitutionally collected.

57 IV. The payments of the said several sums of One hundred dollars ($100) were lawful conditions imposed upon the privilege of clearance.

V. The defendant is entitled to judgment dismissing the complaint on the merits with costs; and I hereby direct judgment to be entered accordingly.

Respectfully submitted,

HENRY L. STIMSON,
U. S. Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Jun- 16, 1908, John A. Shields, Clerk.

58 United States Circuit Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Action No. 1.

The plaintiff submits the following proposed findings of fact, which it deems established by the evidence herein, and the follow-

ing proposed conclusions of law, upon which it requests the Court to rule:

Findings of Fact.

First. The plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and existing by virtue of the laws of the State of New Jersey, and was and
Found. C. M. H. now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Second. The defendant, at all the times hereinafter mentioned, was and still is Collector of Customs at the
Found. C. M. H. Port of New York in the United States of America.

59 Third. Among the steamships so owned, maintained and operated by this plaintiff at the times herein-
Found. C. M. H. after mentioned were the steamships "Zeeland" and "New York."

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which the said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was ar-
ranged and conducted in accordance with
Found. C. M. H. said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule, and any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

Fifth. On or about December 22, 1903, said steamship "Zeeland" arrived at the Port of New York from the
Found. C. M. H. Port of Antwerp, after a voyage of a least eight days, pursuant to said schedule, having on board certain aliens who purposed immigrating into the United States of America, among whom was Alfons Van Geetson,
60 who had embarked on said steamship at said Port of Antwerp as a passenger bound for the Port of New York.

Sixth. On or about December 29, 1903, the defendant, as Collector of the Port of New York, caused the fol-
Found. C. M. H. lowing letter to be sent to the plaintiff, which was received on or about the day of its date:

"UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *Dec.* 29, 1903.

Office of the Collector.

Law Division. Solicitor to the Collector.

Master S. S. "Zeeland", c/o Red Star Line, Empire Building, Manhattan.

SIR: The Secretary of Commerce and Labor has imposed a fine of one hundred dollars upon the S. S. "Zeeland" because it is satisfied that the alien Alfons Van Geetson, who arrived on the 22nd instant, was at the time of foreign embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law the vessel cannot clear from this port until this fine is paid.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector."

Seventh. The receipt of such letter was the first notice the plaintiff received that the imposition of a fine
Found. C. M. H. under section 9 of the Immigration Act of 1903 was contemplated by the Secretary of the Department of Commerce and Labor, or any other officer
61 of the Government of the United States, with reference to the said alien Alfons Van Geetson.

Eighth. In imposing said fine the Secretary of the Department of Commerce and Labor acted without notice
Found. C. M. H. to the plaintiff, and without any opportunity to the plaintiff to be heard.

Ninth. In imposing said fine the Secretary of the Department of Commerce and Labor acted only upon a letter addressed to him by the acting Commissioner of Immigration at
Found. C. M. H. New York, and a medical certificate made by the surgeon in charge at Ellis Island to the effect that said alien was suffering from trachoma at the time of foreign embarkation, and that the existence of such disease could have been detected at such time.

Tenth. Said fine was imposed by the Secretary of the Department of Commerce and Labor without a trial to es-
Found. C. M. H. tablish the liability of the plaintiff to said fine before any tribunal whatsoever.

Eleventh. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any
Found. C. M. H. judicial trial to establish the liability of the plaintiff to said fine.

62 Twelfth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity, and without any hearing
Found as amended. or proceeding whatever of which the plaintiff
C. M. H. had notice or at which the plaintiff had an opportunity to be heard or to produce evi-

dence.

Thirteenth. No suit or action to recover said
Found. C. M. H. fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Fourteenth. On January 27, 1904, when said steamship "Zeeland" was at the Port of New York, ready to depart therefrom on a voyage for foreign ports, pursuant to its said schedule, the defendant, acting under the order of the Secretary of the Depart-
Found. C. M. H. ment of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of said fine of One hundred dollars ($100), as a condition of granting clearance to said steamship from the Port of New York for said voyage, and refused to grant clearance to said vessel unless said fine was paid to him, which payment the plaintiff then made to the defendant, as such Collector, involuntarily and under duress, and only for the purpose of
63 obtaining clearance for said steamship and avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without clearance.

Fifteenth. At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of the Department of Commerce and Labor that a fine had been imposed under Section 9 of the
Found. C. M. H. Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such practice by the defendant had been made known by him to and among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Sixteenth. At the time of the refusal to grant clearance, and of the payment of said sum of One hundred dollars ($100) to obtain the same, it was well known to the defendant
Refused. C. M. H. that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them, or any of them,
64 to obtain such clearance, were made involuntarily and under duress.

Seventeenth. Said exaction of said One hundred dollars ($100) was one of a number of exactions under sim-
Found. C. M. H. ilar circumstances made by the defendant, as such Collector, from said steamship compa-

nies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Eighteenth. On or about January 25, 1905, the Secretary of the Department of Commerce and Labor issued a paper, known as Department Circular No. 58, prescribing the method of procedure for the collection of fines for offences against the provisions of Section 9 of the Immigration Act of March 3, 1903. Said department circular was in terms as follows:

Found. C. M. H.

65 *"Procedure for Imposition of Fines on Account of Bringing Diseased Aliens to the United States.*

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

Bureau of Immigration.

JANUARY 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of section 9 of the immigration act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathesome or dangerous contagious disease shall state in terms whether, in his judgment, the 'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.'

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph thereof, the commissioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz.:

Department of Commerce and Labor, Immigration Service,

Office of —— ——,
Port of —— ——,
—— —, 190–.

To —— ——, —— of the steamship —— ——:
(Master, agent, owner, or consignee.)

66 In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of

the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien: —— —— Steamship: —— —— Disease: —— ——

(Signature) —— ——,
(Title) —— ——.

Received the above notice —— —, 190–, at —— —— M.
(Witness) —— ——. —— ——.

11-1640.

The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the triplicate to be delivered to the collector of customs, who will withhold clearance papers until the deposit is made.

3. Deposit.—The special deposit of $100 required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above-described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical certificate and duplicate notice, in order that such action may be taken as the evidence requires.

67 4. Stay of Action.—If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2 of this circular, the deposit of $100 has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded, together with the certificate of the examining surgeon, to the Commissioner-General of Immigration, for presentation to the Secretary of Commerce and Labor, by the said commissioner or inspector in

charge, who shall at the same time present his written views as to whether the said fine should be imposed. If no evidence is submitted prior to the expiration of the said fourteen days, then said commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

5. Final Proceedings.—Upon receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such date as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100 deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640. V. H. METCALF, *Secretary.*"

Nineteenth. On or about July 1, 1905, said steamship "New York," belonging to the plaintiff, arrived at the Port of New York from the Port of Southampton, England.

Found. C. M. H. after a voyage of at least seven days, pursuant to its said schedule, having on board certain aliens who purposed immigrating into the United States, among whom was one Dolly G. Nassif, who had embarked on said steamship at said Port of Southampton as a passenger bound

68 for the Port of New York.

Twentieth. On or about the 5th day of July, 1905, the Commissioner of Immigration of the Port of

Found. C. M. H. New York caused the following notice to be sent to the plaintiff, which was received by the plaintiff on or about the day of its date.

Original.

Notice of Liability for Fine on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.) 7/6.

OFFICE OF COMMISSIONER.
PORT OF ELLIS ISLAND, N. H. H., *July* 5, 1905.

Imm'ig. Fine
127 W.
July 2, 1905.

To American Line, Owners of the Steamship "New York,"
(Master, agent, owner or consignee.)
9 Broadway, New York City:

In conformity with the requirements of the Department Circular No. 58, you are hereby notified that the certificate of the Examining

surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine,
69 should it be imposed.

Name of Alien:	Steamship:	Disease:
Dolly G. Nassif.	"New York" 127.	Trachoma.

ROBERT WATCHORN.
Commissioner.

N.

Twenty-first. Said letter was the first notice the plaintiff received that the imposition of a fine under Section 9
Found. C. M. H. of the Immigration Act of 1903 was contemplated by any officer of the United States Government with reference to said alien Dolly G. Nassif.

Twenty-second. In directing said deposit to be made the Commissioner of Immigration acted only upon a certificate of the surgeon in charge at Ellis Island that the said
Found. C. M. H. alien was suffering from trachoma, and that the existence of said disease might have been detected at the time of foreign embarkation.

Twenty-third. On July 7, 1905, when said steamship "New York" was at the Port of New York, ready to depart therefrom on a voyage to foreign ports, pursuant to its said schedule, the defendant, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of One hundred dollars ($100) before any fine had been imposed as a condition of
70 granting clearance to said steamship for said voyage from the Port of New York, which payment the plaintiff then made to the defendant, as such collector, involuntarily and under duress and only for the purpose of avoiding
Found. C. M. H. the serious loss and damage which would result from the interruption and disarrangement of the said schedule, and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamships, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships depart-

ing from the Port of New York for foreign ports without obtaining clearance.

Found. C. M. H.

Twenty-fourth. At the time of said payment the plaintiff filed with the defendant the following written protest:

"John C. Ryer. Edward T. Coons.

Cable Address
'Architrave.
Perry, Ryer & Co.,
Customs & Insurance Brokers and Forwarders.

Boston Office, Stone & Downer Co., 131 State Street.

Phil. Office, E. H. Bailey & Co., 406 Library St.

Import Agents N. Y. O. & W. R. R., Ontario Dispatch, and Ontario & Michigan Central Line.

Correspondents in all parts of the World. 66, 68 and 70 Beaver St. Coffee Exchange.
Telephone, 392 Broad.

NEW YORK, *July* 7, 1905.

Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you
71 herewith the fine of $300 imposed on it under Section 9 of the Act of March 3rd, 1903, for the bringing into the United States the following passengers:
Dolly G. Nassif,
Elias Bashara,
Joseph Risk,
on the steamship "New York" arrived July 2nd, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

INTERNATIONAL MERCANTILE MARINE CO.,
JOHN C. RYER, *Att'y.*"

Twenty-fifth. At the time of said exaction and payment of said One hundred dollars ($100) by the plaintiff to the defendant, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Commissioner of Immigration that it appeared to his satisfaction that a steamship, or its owner,

Found as amended. C. M. H.

was, or might be, liable to a fine under Section 9 of said Act of March 3, 1903, to refuse clearance to such steamship until a payment of One hundred dollars ($100) was made to him, and the adoption of such a practice by the defendant had been made known by him to and among the steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Twenty-sixth. At the time of the refusal to grant clearance to said steamship, and of the payment of said sum of One hun-
72 dred dollars ($100) to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed
Refused. C. M. H. that the demand of the defendant for said sum and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them, or any of them, to obtain such clearance were made involuntarily and under duress.

Twenty-seventh. Said exaction of One hundred dollars ($100) was one of a number of exactions made under
Found. C. M. H. similar circumstances by the defendant, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Twenty-eighth. The plaintiff did not pay to the defendant the sum of One hundred dollars ($100), demanded in said notice dated July 5, 1905, within twenty-four hours from the receipt of said notice, and the Secretary of the Department of Com-
Found. C. M. H. merce and Labor, on July 8, 1905, imposed a fine under Section 9 of said Immigration Act of March 3, 1903, without further notice to the plaintiff and without further proceedings or trial, judicial or otherwise.

Twenty-ninth. The period of fourteen days from the receipt of said letter of July 5, 1905, within which to
Found as amended. submit evidence, did not afford the plaintiff
C. M. H. a reasonable opportunity to obtain evidence from the port of embarkation and be heard upon the question whether a fine should be imposed in the
73 case of said alien.

Thirtieth. The usual period of mail com-
Found C. M. H. munication between the Port of Southampton in England and the Port of New York, in the year 1905, was at least seven days each way between said Port of Southampton and said Port of New York.

Thirty-first. In imposing said fine, the Secretary of the Department of Commerce and Labor acted solely upon a medical certificate of the surgeon in charge at Ellis Island to the effect that the alien, Dolly G. Nassif, was afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation,
Found. C. M. H. and that its existence might have been detected by means of a competent medical examination at said time, and upon a letter of the Commissioner of Immigration at New York informing him that the deposit required by said letter of July 5, 1905, had not been made within twenty-four hours after its receipt by the plaintiff.

Thirty-second. In imposing said fine the Secretary of the Department of Commerce and Labor acted with-
Refused. C. M. H. out any opportunity to the plaintiff to be heard.

Thirty-third. Said fine was imposed by the Secretary of the Department of Commerce and Labor without a trial to establish the liability of the plaintiff to said fine before any tribunal whatsoever.

Found. C. M. H.

74

Thirty-fourth. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any judicial trial to establish the liability of the plaintiff to said fine.

Found. C. M. H.

Thirty-fifth. Said fine was imposed by said Secretary of the Department of Commerce and Labor and without any suit at law or in equity and without any proceeding or hearing whatever of which the plaintiff had any notice and at which the plaintiff had a reasonable opportunity to be heard and to produce evidence from the part of embarkation.

Found as Amended. C. M. H.

Thirty-sixth. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Thirty-seventh. At the times of the arrivals of said aliens at the Port of New York, the plaintiff had at Ellis Island a person known as a landing agent, whose duties were exclusively to look after the welfare of the aliens arriving by said steamships, and to see that they were properly forwarded to their respective destinations.

Found as Amended. C. M. H.

75

Thirty-eighth. There was no evidence produced on the trial that in the cases of the aliens Alfons Van Geetson and Dolly G. Nassif, the said landing agent was in fact notified of the intention of any officer of the United States Government to impose a fine in the case of either of said aliens under the provisions of Section 9 of the Immigration Act of 1903.

Found. C. M. H.

Thirty-ninth. No part of said sums so paid to the defendant by the plaintiff in the cases of said aliens, Alfons Van Geetson and Dolly G. Nassif, has been repaid to the plaintiff.

Found. C. M. H.

All refused. C. M. H.

Conclusions of Law.

First. The imposition of the said fine upon the plaintiff in the case of the alien Alfons Van Geetson was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

Second. The imposition of the said fine upon the plaintiff in the case of the alien Alfons Van Geetson was in violation of the right of the plaintiff to a trial by jury in a criminal prosecution under subdivision 3 of Section 2 of Article III of the Constitution of the United States.

76 Third. The imposition of the said fine upon the plaintiff in the case of the alien Alfons Van Geetson was in violation of the right of the plaintiff under the Sixth Amendment of the Constitution of the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

Fourth. The exaction of the sum of $100 from the plaintiff in the case of the alien Alfons Van Geetson deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Fifth. The provisions of the Immigration Act of March 3, 1903 did not authorize the Secretary of the Department of Commerce and Labor to adopt the procedure for the collection of fines for offenses against the provisions of Section 9 of said Act, set forth in Department Circular No. 58, issued by said secretary on or about January 25, 1905.

Sixth. The provisions of the Immigration Act of March 3, 1903, did not authorize the exaction of $100 from the plaintiff in the case of the alien Dolly G. Nassif before any fine had been imposed upon the plaintiff.

77 Seventh. The provisions of the Immigration Act of March 3, 1903, did not authorize the withholding of clearance to plaintiff's steamship at New York in the case of the alien Dolly G. Nassif before any fine had been imposed in that case.

Eighth. The exaction of $100 from the plaintiff, in the case of the alien Dolly G. Nassif, deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Ninth. The imposition of the said fine upon the plaintiff, in the case of the alien Dolly G. Nassif, was in violation of the right of the plaintiff to have its liability to such fine established by judicial trial under Section 1 of Article III of the Constitution of the United States.

Tenth: The imposition of the said fine upon the plaintiff, in the case of the alien Dolly G. Nassif, was in violation of the plaintiff's right under the third subdivision of Section 2 of Article III of the Constitution of the United States to a trial by jury in a criminal prosecution.

Eleventh. The imposition of the fine upon the plaintiff, in
78 the case of the alien Dolly G. Nassif, was in violation of the right of the plaintiff under the Sixth Amendment to the Constitution of the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted by the witnesses against it and otherwise as stated in said amendment.

Twelfth. The imposition of the fine upon the plaintiff in the case of the alien Dolly G. Nassif deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Thirteenth. Congress has no power under the Constitution of the

United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the liability to such fine or penalty.

Fourteenth. Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the guilt of the accused.

Fifteenth. Congress has no power under the Constitution of the United States to provide for the taking of the property of any
79 person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such person and without a reasonable opportunity for such person to be heard.

Sixteenth. Under Section 9 of the Immigration Act of March 3, 1903, clearance cannot be refused unless a fine has been legally imposed for an offense against the provisions of said Act.

Seventeenth. Congress has no power to authorize the Secretary of the Department of Commerce and Labor or any other executive officer of the United States Government to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

Eighteenth. Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

Nineteenth. Congress has no power under the Constitution of the United States to authorize an executive officer of the Govern-
80 ment to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of March 3, 1903, in advance of a trial or hearing to establish the liability for such fine.

Twentieth. Congress has no power under the Constitution of the United States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of March 3, 1903, in advance of a trial or hearing to establish the guilt of the accused.

Twenty-first. The provisions of the Act of March 3, 1903, did not authorize the adoption by the Secretary of the Department of Commerce and Labor of the regulations and procedure set forth in Circular 58 as a method for the imposition and collection of a fine for an offense against the provisions of Section 9 of said act.

Twenty-second. The plaintiff is entitled to judgment for the recovery of the sum of $100, paid to the defendant in the case of the alien Alfons Van Geetson, with interest from the date of such payment.

Twenty-third. The plaintiff is entitled to judgment for the
81 recovery of the sum of $100 paid to the defendant in the case of the alien Dolly G. Nassif, with interest from the date of such payment.

Respectfully submitted,

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 16, 1908, John A. Shields, Clerk.

82 At a Stated Term of the United States Circuit Court, held in and for the Southern District of New York, at the United States Court and Post-office Building, Borough of Manhattan, City of New York, on the — day of June, 1908.

Present: Hon. Charles M. Hough, District Judge.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

This cause having come on to be tried before the undersigned pursuant to a waiver of a jury, duly filed herein, and an opinion having been rendered by the Court, and filed, and findings of fact and conclusions of law having, in accordance with said opinion, been duly made and filed herein.

Now on reading and filing the said findings of fact and conclusions of law, and after hearing Lucius H. Beers and William G. Choate, Esqs., of counsel for the plaintiff, and Henry L. Stimson, Esq., United States Attorney, of counsel for the defendant, on motion of Henry L. Stimson, United States Attorney, attorney for the defendant, it is

Ordered that judgment be entered dismissing the complaint herein with costs to be taxed.

C. M. HOUGH,
U. S. Judge.

The above is agreed to as to form.

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, Southern District of New
83 York.—Action No. 1.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Order of Judgment. Henry L. Stimson, United States Attorney, Attorney for Deft.—Due service of a copy of the within is hereby admitted. New York, June 19, 1908, Lord, Day & Lord, Attorneys for Plff.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 22, 1908, John A. Shields, Clerk.

84 United States Circuit Court Southern District of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

The issues in this action having been brought on for trial before the Hon. Charles M. Hough, District Judge, pursuant to a waiver of a jury, duly filed herein, and the plaintiff appearing by Lord, Day & Lord, and the defendant by Henry L. Stimson, United States Attorney, and the issues having been tried and a decision having been duly rendered in favor of the defendant directing a dismissal of the complaint with costs to be taxed,

Now on motion of Henry L. Stimson, United States Attorney, attorney for the defendant, it is

Adjudged that the complaint herein be and it is hereby dismissed with Thirty eight and 65/100 dollars ($38.65) costs.

Dated New York, June 26, 1908.

JOHN A. SHIELDS, *Clerk.*

Consented to as to form.
LORD, DAY & LORD,
Attorneys for Plaintiff.

85 (Endorsed:) U. S. Circuit Court, Southern District of New York.—Action No. 1.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Judgment. Henry L. Stimson, United States Attorney, Attorney for Deft. U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

86 Circuit Court of the United States, Southern District of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Bill of Exceptions.

This cause came on for trial on June 17, 1907, at a term of this Court held by the Hon. Charles M. Hough, United States District Judge, holding said Court pursuant to statute.

Messrs. Lord, Day & Lord appeared for the plaintiff; Mr. William G. Choate and Mr. Lucius H. Beers, of counsel.

Henry L. Stimson, United States Attorney, appeared for the de-

fendant; Mr. W. T. Denison and Mr. Felix Frankfurter, Assistant U. S. Attorneys.

This cause was tried at the same time with an action brought by the same plaintiff against the same defendant, known as Action No. 3, and at the same time as an action brought by the Oceanic Steam Navigation Company, Limited, against the same defendant. The appearances for the plaintiff in each case were the same and the appearances for the defendant in each case were the same.

It was stipulated that all the testimony taken in the three actions should apply to each of the three actions.

The following proceedings were had in the above entitled cause, to wit:

87 A trial by jury was expressly waived by stipulation in writing dated April 5, 1907.

By stipulation the plaintiff was allowed to amend its complaint, paragraph number Seventy-fifth, by adding at the end of said paragraph the following words:

"And also in that it gives to an executive officer of the Government powers which by Article III of the Constitution are given only to the judiciary, and denies to the plaintiffs a trial by jury in contravention of Subdivision 3 of Section 2 of Article III of the Constitution."

The plaintiff was further allowed by stipulation to amend the One hundred and twenty-fifth paragraph of its complaint, by adding at the end of said paragraph the following:

"And also in that it gives to an executive officer of the Government powers which by Article III of the Constitution are given only to the judiciary, and denies to the plaintiffs a trial by jury, in contravention of Subdivision 3 of Section 2 of Article III of the Constitution."

Said amendments to the plaintiff's complaint were made without prejudice to the proceedings already had in the action, and it was stipulated that the answer of the defendant to the complaint should stand as the answer to the complaint as so amended.

88 Testimony of SAMUEL S. CORTES, a witness called by the plaintiff, taken by deposition on May 16, 1907, pursuant to stipulation of parties.

Direct examination by Mr. BEERS:

I am connected with the Oceanic Steam Navigation Company, and have been with that Company since 1876. I have charge of the steerage passenger department of the White Star Line. Any communication with the United States Government or from any Government officials in relation to the enforcement of the Immigration Laws, would come to me in the ordinary course of the business of that Company. Those matters have been entirely in my charge ever since the Immigration Laws came into effect. I have made a special study and examination of the various Immigration Laws, which have been passed by Congress during the time that I have been connected with the Company.

The duties of my position require that I should be especially familiar with those laws.

I recall the first demand for payment which was made on the Oceanic Steam Navigation Company, under the provisions of Section 9 of the Immigration Act of 1903. The letter which you show me was received by me shortly after it came into the office, in fact it was seen by me first of all, and then passed over to the other gentlemen who put their initials on it.

Mr. BEERS: I offer the letter in evidence.

Letter is received in evidence and marked plaintiff's Exhibit 1.

By agreement the letter is transcribed into the minutes as follows:

89 PL'FF'S EX. 1. May 16–07–D.

"M. P. M. Customs Service, Office of the Collector.

Law Division, Solicitor to the Collector.

"Arabic."

NEW YORK, N. Y., *July* 16, 1903.

(TW.)

Master S. S. "Arabic," c/o White Star Line, 9 Broadway, N. Y.

SIR: The Secretary of the Department of Commerce and Labor has imposed a fine of $100 upon the S. S. "Arabic," because he is satisfied that the alien Johann Klaara, who arrived per "Arabic" on July 5th, was at the time of embarkation afflicted with trachoma, a dangerous, contagious disease.

Please call at this office without delay in regard to the matter.

Respectfully, F. E. HAMILTON,
Solicitor to the Collector."

F. R. $100. SC.
H. W.

Cashier's Office.
Paid
July 18, 1903.
Custom House,
N. Y.

To Mr. Cortes, Please initial.

Accountant's
New York
Department."

90 The WITNESS. To the best of my ability this letter, plaintiff's Exhibit 1, was the first notice of any sort, which was received by the White Star Line in reference to this first demand under Section 9 of the Immigration Act. The Oceanic Steam Navi-

gation Company is the corporate name of the White Star Line. That line is the owner of the Steamship "Arabic." In the course of the business of the White Star Line, any notice or letters with respect to demands under Section 9 of the Immigration Act, would have come to me. They would have to bear my initial before they could be dealt with. This letter, plaintiff's Exhibit 1, bears my initials.

Q. Did you, prior to the receipt of this letter (Plaintiff's Ex. 1) receive any notice of any description that any officer of the United States Government was considering or was about to consider the question of imposing any fine on the White Star Line or on any officer or employee of that line by reason of the transportation to the United States of any passengers who were carried on the S. S. "Arabic" on the voyage terminating at the Port of New York in July 1903?

A. If any such notice were received it would have been attached to that letter; all those documents are kept together and filed.

Q. I call your attention to Plaintiff's Ex. 1 and ask whether from an examination of the letter and from the fact that no other documents are connected with it excepting a blank voucher, you can testify whether or not you did receive any previous notice of any description?

A. As I said previously, if any previous notice had been
91 received it would have been attached to this letter, therefore, no notice was received.

Q. And can you then testify that no notice was received?

A. I can.

Q. Did you ever hear in any way of any other notices?

A. No, sir.

Q. I call your attention to the final clause in this letter (Plaintiff's Exhibit 1), asking you to call at the office of the solicitor to the collector and ask you to state fully what you did in response to that request?

A. I proceeded to the Custom House I think the same day I received this letter, in fact, I am sure of it. I called on Mr. Hamilton and I protested against the imposition of the fine on the ground that it was unjust, for the reason that we had been deprived of all opportunity to defend ourselves, and I considered that we were entitled to call in expert testimony. I took the ground that a doctor frequently makes mistakes in the diagnosis of a case, and I gave my own case as an example. I stated to Mr. Hamilton that according to an expert's opinion some eight years before I ought to be perfectly blind. I had my eyes examined by Dr. Callan, a specialist in eye diseases, a man of reputation, who, after examining my eyes carefully, stated that within three years I would be blind from cataract. My eyes to-day, allowing for the difference in age, are as good as then. I stated that as a ground that the Steamship Company should be afforded an opportunity to test the cases through a medical officer. Mr. Hamilton agreed with me in this and gave his own case as an incident. He offered himself

to an insurance company for a policy and was refused. He
92 applied to another company and was promptly accepted. We discussed the matter very fully, but he wound up by saying that I did not have any cause to complain because notice was being given to another line, informing them of the imposition of a fine of $800. I left him and we had to pay the fine. Nothing was suggested at all that the Government was willing to waive or relax this demand.

Q. Did the White Star Line pay this sum of $100, demanded in this first Exhibit 1?

A. We had to.

Q. What effect would it have had on the business of the White Star Line if clearance of the "Arabic" had been refused?

A. She would have been held up and could not sail.

The WITNESS: She is sailing on a regular schedule. The White Star Line had entered into contracts for the carrying of passengers and freight on the "Arabic." We had quite a number of passengers on the ship.

The White Star Line paid the $100 demanded by this letter, because the ship would have been held up by the authorities if we had not paid it. That was the only reason for our paying it. I do not think that Mr. Hamilton at the conversation as to which I have testified said anything to me about clearance being withheld if the fine was not paid. I believe we received an official notice that it would have to be paid, or clearance withheld, in fact the law states so; that clearance should be withheld until the fine is paid.

Q. Have you been, Mr. Cortes, from the nature of your position in the Oceanic Steam Navigation Company, in frequent com-
93 munication with other steamship lines in reference to matters relating to the enforcement of the United States Immigration Laws?

A. I am chairman of the Ellis Island committee which has to deal with all matters connected with Ellis Island where all these matters are discussed and where any grievances are discussed, resulting in frequent interviews with the Commissioner and also in taking legal advice.

Q. Do you know whether after the passage of the Immigration Act of 1903, the Collector of the Port of New York, adopted a uniform custom and rule in reference to exacting payments as a condition of granting clearance in all cases where it had been certified to him that a fine had been imposed under Section 9 of the Immigration Act, and if you do know about such a rule, what was the rule?

A. The rule was that when the Custom officers went to clear the ship, we had to deposit the fine of $100. That was always the case with us and I do not think there was any difference in regard to the other lines. I never heard of any line that did not have to pay the fine prior to clearance. I did not have any subsequent conversation with Mr. Hamilton, nor with the collector, in reference to this subject. We were given to understand that the position was final in each case. This payment of $100, was paid at the time before the "Arabic" left, as near as I can remember. It was paid immediately before I next applied for clearance.

The letter which you show me was received by me. It bears my initials.

Mr. BEERS: I offer the letter in evidence.

Letter received in evidence and marked Plaintiff's Exhibit 2.

94 By agreement the letter is transcribed into the minutes as follows:

Ex. 2. May 16-07-D.

"UNITED STATES CUSTOMS SERVICE. 9865
"PORT OF NEW YORK, *October* 8, 1903.

White Star Line, 9 Broadway, N. Y.

GENTLEMEN: I have to inform you that the Department of Commerce and Labor has imposed a fine of one hundred dollars upon the steamship "Germanic" because it is satisfied that the alien Paolo Nacchi, a passenger ex "Germanic", October 2nd, was at the time of embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

Respectfully,

F. E. HAMILTON, *S. C.*,
Solicitor to the Collector.

F. R.
$100.
H.

W (TW)

(Cashier's Office
Paid.
October 21, 1903,
Custom House
N. Y.)"

Q. Please examine this letter (Plaintiff's Ex. 2) together with the voucher annexed to it and state whether it is the first notice of any kind which was received by the White Star Line that any officer of the United States Government was considering or was about to consider the question of imposing any fine on the White Star Line or on any officer or employee on any ship of that Line by reason of the transportation of any passengers who were on board the S. S. "Germanic" on her voyage to the Port of New York ending in October 1903?

95 A. The Commissioner at Ellis Island, I think, about that time, adopted a different system. I think he gave the Steamship Companies notice that he had notified the Collector of the Port that a fine had been imposed or rather he notified the Steamship Companies that the Collector of the Port had been notified that a fine had been imposed, and after that we received this notice from the Collector. I cannot remember the exact date when the Commissioner adopted the plan of notifying the Steamship Companies, but the notice that a fine had been imposed by the Commissioner preceded the notice from the Collector of the Port probably two

days, but there was no opportunity for people to appeal or say anything in defense.

Q. Were these notices which you say you think the Commissioner at Ellis Island sent to the Steamship Companies, notices that the fine had been imposed?

A. That a fine had been imposed in accordance with section 9. I am almost certain that if such a notice had been received it would have been attached to that letter.

The WITNESS: I recall the circumstances connected with the payment of these various fines under Section 9 of the Immigration Law and the circumstances under which payment was demanded.

In every case which arose prior to the first of January, 1905, the first notice received by the White Star Line was a notice that a fine had been imposed. The White Star Line paid the sum of $100, which was demanded in the letter of October 8, 1903, Plaintiff's Exhibit 2. Payment was made because clearance would have been withheld if we had not done so. If clearance had been withheld the ship would have been held up. The business would have been very seriously disorganized. Both payments, made
96 under the demand contained in Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2, were made for the purpose of obtaining clearance at the next time when application was made for clearance for the "Germanic" and "Arabic" respectively.

Cross-examination by Mr. DENISON:

I cannot remember how long I have been chairman of the Ellis Island Committee. I should say about three or four years. I was not chairman of the committee at the time of these facts to which I refer. The Committee was not organized until some time afterwards.

I have had personal charge of the Ellis Island matters for my company ever since Ellis Island was established. I have always since that time informed myself as to the immigration laws; it is my duty, I am compelled to, among others with Section 9 of the Act of March 3, 1903. In July, 1903, I was familiar with these laws and with that section.

Q. Did your company have a landing agent down there at Ellis Island?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial, upon the question of imposition of a fine.

Objection overruled; exception.

A. They did; it was Mr. Phillips; he had been landing agent there for the last fifteen years.

Q. What have been his duties in that position?

Mr. BEERS: Same objection, on same ground.

Objection overruled; exception.

A. His duties are simply to attend to the landing and forwarding of passengers, to assist passengers, and to deliver them money which we have received for them.

I have seen a paper like the paper entitled "Surgeon's Notice that passenger has been sent to Hospital," which you show me.

97 Mr. DENISON: I offer in evidence this paper.

Mr. BEERS: I object to the admission of this paper in evidence as incompetent, irrelevant and immaterial, and having nothing to do with the imposition of a fine.

Objection overruled; exception to plaintiff.

Paper received and marked "Defendant's Exhibit A."

By agreement the paper is transcribed into the minutes as follows:

Ex. A. May 16-07.

"Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *May* 16, 1907

Agent, White Star Line, 9 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving May 16, 1907 per Steamship "Cedric" and this day placed in hospital, for reasons given below:

		Immigrant	
8000.	John Jones.	26	Ireland—Disease of eyes.

Respectfully,

GEO. W. STONER,
Surgeon in Charge."

Cross-examination continued by Mr. DENISON:

Q. Similar notices to that have been forwarded to your company for many years?

98 Mr. BEERS: I object to this question on the ground that it is incompetent, irrelevant and immaterial, and having nothing to do with the imposition of a fine.

Objection overruled; exception.

A. Yes.

Q. Was it the practice of the department, or of the bureau at Ellis Island to send to your company notices similar to this, Defendant's Exhibit A, as early as July 1903?

Mr. BEERS: Same objection on the same grounds.

Objection overruled; exception.

A. I think so, yes.

Q. Was your company called upon to pay the hospital expenses of immigrants forming the subjects of notices like Exhibit A?

Mr. BEERS: Same objection on the same grounds.

Objection overruled; exception.

A. Yes.

Q. Did you keep a check on such charges?

Mr. BEERS: Same objection on the same grounds.
Objection overruled; exception.

A. Yes.

Q. When bills came in for immigrants brought over by your company how would you check up the correctness of these bills?

Mr. BEERS: Same objection on the same grounds.
Objection overruled; exception.

A. As soon as we received these reports (referring to Exhibit A) we checked up the numbers and the amounts charged.

The WITNESS: They were not checked by the landing agent or any other person. We simply took our landing agent's reports that these men had been sent to the hospital. He would not always
99 report for what reason the aliens would be sent to the hospital. In some cases he did, for instance, scarlet fever, and such diseases he would report on.

I am aware that Section 9, imposing a fine on the steamship company for bringing in aliens suffering from certain diseases, indicates such diseases discovered at the time of shipment.

Q. Now, are you clear whether or not at the time you received Exhibit 1, or thereabouts, you received any written notice that clearance would be withheld?

A. We certainly should not have paid the fine before clearance if we had not received such a notice.

The witness continuing:

Such a notice, if it had been received, would probably have been attached to the same paper as part of the file in that matter, but inasmuch as that was the first fine paid, I am not quite sure on that matter.

Q. After the time that fine was paid concerning the case of July 5 or thereabouts, did your company change its practice with reference to dealing with the situation at Ellis Island?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. No, sir. I cannot recall that prior to the time when the first fine was imposed upon my company, that I had any conversations with other steamship representatives on the subject of Section 9. I cannot say that I knew of the imposition of any fine under that section upon other companies prior to that time, but it is possible I might, but I could not say either one way or the other.

The subject had not made any special impression upon my mind, prior to the receipt of Exhibit 1, except the fact that I was
100 dreading that we should be fined. I had not had any conversation with steamship companies generally upon the subject. I cannot remember whether I did afterwards.

Q. Mr. Cortes, since January, 1905, which was the time the change

of practice was made by the Government, has your Company made any change in its practice?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. Not at all.

Q. Have you ever asked for any hearing in any of these cases?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. No, sir.

Q. Have you ever offered any evidence in these cases?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. No, sir; the evidence would have to be gotten on the other side; we had only fourteen days.

Q. Have you ever sent any physician down there to examine the immigrants?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. No sir, for the reason that the decision is final.

Q. Mr. Cortes, the present practice, since January, 1905, has been to notify your company that a hearing would be granted
101 within fourteen days?

A. Yes.

Q. Now, since that practice was instituted, has your company ever sent any physician to Ellis Island to examine any persons who were the subject of notices?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A. No, sir.

Q. Have you at any time, either before or after the issue of Circular 58, instructed the company's representative at Ellis Island to ascertain and report whether any special certificate had been filed with respect to any immigrants coming on your line? By special certificate I mean a certificate that the alien arriving on one of your steamships was afflicted with a dangerous contagious disease.

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. Yes, I have; I cannot remember the exact date.

Q. Approximately?

A. Well, since the fines were instituted for dangerous and contagious diseases, he was instructed to report such cases; he was not so

instructed prior to the imposition of the first fine, covered by Exhibit 1; I cannot remember whether he was instructed prior to the imposition of the fine covered by Exhibit 2, but naturally I should think he would do so.

Redirect examination by Mr. BEERS:

It is my understanding that Section 9 of the Immigration Act of 1903 is the only section in that act relating to the imposition of fines in the case of immigrants afflicted with contagious diseases.

102 Q. Did you understand from these letters, Plaintiff's Exhibit 1 and Exhibit 2, that the demands of payment made in those letters were made under the provisions of Section 9 of the Immigration Act?

A. It is so stated in one of them, I believe. The letter of October 8, 1903, states distinctly that under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

I understood that the letter, Plaintiff's Exhibit 1, made a demand under the same section, Section 9.

Q. At your conversations with Mr. Hamilton, of which you have testified, did you and he discuss the subject of withholding of clearance?

A. That I cannot remember. We discussed wholly the injustice of the law, according to my idea.

Testimony of ROBERT S. CRATER, a witness called by defendant, taken by deposition on May 20, 1907, pursuant to stipulation of the parties.

Direct examination by Mr. DENISON:

My occupation is that of an immigrant inspector at Ellis Island. I have been in that position thirteen, I think fourteen, years,—thirteen positively. I have charge of the registry division of immigrants at Ellis Island. I was an immigrant inspector in 1903, boarding ships, inspecting first and second cabin passengers. I did not perform any duties on Ellis Island with reference to immigrants presented there, further than delivering the steerage passengers to Ellis Island for registration. I only had to do the checking off of names of first and second cabin passengers from the ship's manifest.

Q. Do you know the practice which existed in 1903 at El-
103 lis Island with reference to checking the names of steerage passengers, when presented at Ellis Island?

Mr. BEERS: Objected to as immaterial and irrelevant, as to any of the issues involved in this action.

Objection overruled; exception.

A. The method of checking immigrants is done with a red ink pen, as each immigrant appears before each inspector; that check mark is made on the ship's manifest. The only names that are checked with red on the ship's manifest are those which appear before the inspector; the names of those who failed to pass the

medical division would not be checked in red on the ship's manifest. That was the practice in 1903, is still the practice, and has been the practice ever since I have been in the service.

After the ship's manifest has been so marked, it is sent to the statistical division, where it is bound in book form and kept as a matter of record.

Q. Are the data in that division open to the inspection of representatives of steamship companies, if they care to see it?

Objected to as immaterial and irrelevant and incompetent; that the fact that these records may be open to inspection is not any evidence of notice to those companies of the facts which may be contained in those records.

Objection overruled; exception.

A. No, sir, because the moment we get through with them we send it down to the information bureau, so that if any one calls for their friends the immigrants can be located; they are then sent back to me at night, and early the following morning are sent to the statistical division, where any of the landing agents can have access to them. No landing agent could have access to these records
104 while the inspector is checking the names on the manifest; it would be impossible for him to watch them, as there are twenty working at times; it would not be possible for the landing agent to stand beside me while I was checking the names on the manifest; we do not permit any one to stand at the desk while we are registering. The first thing we do with the manifest after it is checked is to send it down to the information bureau.

Q. And they are open to anybody's examination?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. Yes, sir; it is open at my office for the inspection of any one until it is sent to the information bureau.

No cross-examination.

Testimony of WILLIAM F. MCDOWELL, a witness called by the defendant, taken by deposition on May 20, 1907, pursuant to stipulation of the parties.

Direct examination by Mr. FRANKFURTER:

I am in charge of the executive work of the medical division of the immigration service at Ellis Island, and have been connected with the service about seventeen years, and have had charge of the executive office of the medical division for the same length of time. I am familiar with the whole course of procedure, as far as it relates to the medical division.

Q. Will you tell us just what is the course of procedure by which an alien comes into the medical division?

Mr. BEERS: I object, on the ground that this evidence is immate-

rial and irrelevant, in no way connected with the issues here,
105 and there is nothing to show that the steamship companies have any notice of what takes place.

Objection overruled; exception.

A. We rail off lines from one, two or three from the stairway in the entrance of the immigration building at Ellis Island. On these lines are stationed two doctors, one at the foot and one at the head of each line; the immigrants come up the stairway and are presented to them; the man at the head of the line examines for all defects other than diseases of the eye; the man at the end of the line examines for eye diseases; for any defects noted by either doctor, there is a special mark made on the immigrant's clothing—a mark which is understood by the examiners—and they are turned one side into a compartment. Those that pass go on to the right and up to the registry division. After the ship has landed those that have been sent aside by the doctors are taken back into the medical examination room, and there examined by as many officers as are necessary to complete the work. I mean by medical officers those of the Marine Hospital Service. Some of them receive a notation where the disease or injury is of such a slight nature as not to call for a certificate: these notations are made on the manifest by the inspector, who takes cognizance of them in relation to other matters in connection with the immigrant. For instance, a man has a thumb off, and they note it; this would appear on the manifest, the inspector using his judgment as to whether this man should be landed or sent before the board of special inquiry. The others are still further examined, and if the disease is such as requires a
105 certificate and not hospital treatment, they are certified, and sent before the registry officer, who in turn sends them to the special inquiry division, and they go in the end to the board of special inquiry. Those that require medical treatment, their papers are made out and they are sent to the hospital, that is, to our hospital at Ellis Island. As soon as the patient is sent to the hospital, there are a number of papers made out in relation to each case,—the record of his admission, the notification to the steamship company that the man has been admitted, and the notice to the registry division that we have held in the hospital such a man; these entries are made in books. There is a blank form made out notifying the steamship company that the alien has been sent to the hospital, suffering from whatever disease is apparent, or in cases where the disease cannot be diagnosed at the moment, they say "For observation." That report is made and sent immediately on the passing of the immigrant to the hospital; that practice has been in vogue since 1891. The paper which you show me is a sample of the notification I speak of.

That is sent immediately, upon the immigrant's arrival at the medical division, to the agent of the steamship line in every case; we make a copy of this notification: that is sent out at the very day of the arrival of the aliens in the medical division.

The representatives of the steamship lines visit us very often with respect to the notifications. I am familiar with the representatives

of the steamship lines; the representatives often call; I don't remember what they ask, particularly. Reports are made of the patients in the hospitals; five reports are made every morning of all patients admitted to the hospitals under the management of the immigration service—of all patients who have been admitted the day pre-
107 vious. One report is made to the statistician's office, one to the superintendent's office, one to the special inquiry division, one to the information bureau, and one to the central office and the registry division. That is a daily report; the daily report contains the name, age and occupation, ship from which the aliens arrived, the name of the hospital to which the patient has been sent (as we have a number of hospitals) and also the disease from which he is suffering, or, as near as we can make it out, the diagnosis of the disease.

Q. As far as you know, is the report accessible to the representatives of the steamship lines?

Mr. BEERS: I object to this testimony, upon the ground that it is entirely immaterial, irrelevant and incompetent; that if the report is accessible, it is not any notice to the steamship line of its contents.

Objection overruled; exception.

A. I couldn't say whether they used it or not; it is accessible; it is a daily report. We also send notification to the companies in case of death. In case an alien is to be deported, the customary practice from the year 1903 down to and including the year 1905, so far as the medical division is concerned, is this: There is a certificate to be made out by the medical officers; this certificate comes to my office, where I check it up, compare it, and that certificate, if it is a case that is not excludable according to law, goes to the special inquiry division. There it is placed before the board, to act upon it and decide whether the case shall be landed or not in case of a mandatory certificate. By mandatory certificate I mean those that come under the statute as being excluded by law. The same course is pursued, with the exception of cases that are marked
108 "Special," or what we term "Special," being cases that come under the law for fines. In this case two certificates are made; one goes through the course before mentioned and the second goes to the chief clerk, who is the executive of the Commissioner, and that is as far as the medical division goes. When the case is finally to be deported, then the deporting physician sends a special requisition to my office, and I have the immigrant brought up and turned over to him and his receipt taken for. That is done on the same day that the alien is placed on board ship for deportation,—not the day that the ship sails, but the day before.

Q. During that whole period, from the time that a case actually gets into your division, until the time that a case has been deported, have the representatives of the steamship lines free access to your division for any information that they may desire?

Mr. BEERS: Objected to as incompetent, immaterial and irrelevant, and not proof of notice of anything to the plaintiff.

Objection overruled, exception.

A. Yes, sir, they have had that access in 1903, 1904 and 1905.

Q. Has the source of information been resorted to in the past by these representatives?

Mr. BEERS: Objected to as incompetent, immaterial and irrelevant, as it does not give any notice of anything to the plaintiff.

Objection overruled, exception.

A. Often—often during the years 1903, 1904 and 1905; every facility is accorded to the landing agents for information regarding medical cases. I do not understand that they have access to
109 the hospital; they could see the aliens during visiting hours; that privilege comes through the office of the hospital. Doctors representing the steamship lines occasionally have visited or consulted with respect to aliens in our division in the past; if the steamship lines request that doctors be permitted to consult with the medical officers of the Government, such courtesy is always extended to medical men.

By Mr. DENISON:

The various practices and methods which I have testified to have existed at Ellis Island during and since 1903. I know the paper which you show me; it is the notification sent by my office to the steamship company, notifying them that an alien has been placed in a hospital from one of their ships; I mean it is a copy of the notification. The original was made in this style, this is evidently a copy; the copy is kept in the copy-book. The reference to the book and page in the corner means, copy-book No. 23 of such records; it refers to the book in which copies of such notices are recorded when they are sent to the steamship companies indicated.

Mr. DENISON: I offer in evidence this paper.

Mr. BEERS: I object to the admission of this paper in evidence, upon the ground that it is immaterial; irrelevant and incompetent, and no proof of any notice of an intention on the part of the Government to impose a fine under Section 9.

Objected overruled; exception.

Letter received in evidence and marked defendant's Exhibit B.

The letter was spread on the record in full, and is as follows:

110 DEF'T'S EX. B.

"Book 23. Duplicate Copy. Page 75.

N. Y. Form 121.

Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *Oct.* 2, 1903.

Agent White Star Line, 5 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving this day per steamship Germanic, and this day placed in hospital, for reasons given below:

Immigration Hosp.

1518 Paolo Necchi,—24—Italy—Eyes.

Respectfully,

GEO. W. STONER,
Surgeon in Charge.
A. H. C."

The paper which you show me is a copy of a similar notice sent at the date indicated, with reference to one Van Geetson, among others.

Mr. DENISON: I offer this letter in evidence.

Mr. BEERS: I object, on the ground that it is incompetent, immaterial and irrelevant, and does not show any notice on the part of the Government of an intention to impose a fine.

Objection overruled; exception.

Letter received in evidence and marked Defendant's Exhibit C.

111 The letter was spread on the record, pursuant to stipulation as follows:

DEF'T'S EX. C.

"Book 24. Copy. Page 32.

Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *December* 22, 1903.

Agent Red Star Line, 73 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving December 22, 1903, per steamship Zeeland, and this day placed in hospital, for reasons given below:

Long Island College.

2526 Wytze Byker—49—Holland—Hydrocele
2527 Alfons Van Geetson—28—Belgium—Disease of eyes
2530 Petros Lagowy—29—Austria—
2531 Gyulo Horvath—25—Hungary—Abscess—Face

Respectfully,

GEO. W. STONER.
Surgeon in Charge.
G. Y. S."

I have known a Mr. Vogel, who was formerly an agent, I think, of the Cunard Line. I think he represented the Line which owns the "Zeeland"; he was an agent of the company; I have seen him many times; he was for years employed by the company at Ellis Island; he was a landing agent of that company in 1903.

112 I know a Mr. Bernstein; he is a landing agent of one of the companies; I think he represents the Cunard Line, I am not certain about that; I know he represents one of the companies.

Cross-examination by Mr. BEERS:

The notices in the form of the papers marked Defendant's Exhibits B and C are the only notices sent to the steamship companies as to the admission of an immigrant to the hospital by the medical division. There are also notices different from these sent by the medical department to steamship companies such as death notices; there are transfer notices, or in other words, when a patient is transferred from one hospital to another, the same patient, the notice is sent. There are no other notices sent by the medical department to the steamship companies other than notices like Exhibits B and C, and death notices and transfer notices. These are the only forms of notice ever given by the medical department to the steamship company.

I have no personal recollection of an immigrant Johann Klaara who arrived in July 1903 on the steamer "Arabic," or of the immigrant Paola Necchi who arrived on the "Germanic" in October 1903, or of Alphonse Van Geetson, who arrived on the "Zeeland" in December 1903, or the case of Dolly Nassif, who arrived on the "New York" in July, 1905, more than I have of the other 20,000 that I have handled since that time.

By Mr. DENISON:

I have testified in my direct examination as to the universal practice of my department with reference to all immigrants.

113 BYRON H. UHL, a witness examined on behalf of the defendant, by deposition, on May 20, 1907, pursuant to stipulation of the parties, testified as follows:

By Mr. FRANKFURTER:

My position is that of chief clerk of the Immigration Station at Ellis Island. I have been connected with the Immigration Service at Ellis Island for about fourteen years. The general function of the executive division at Ellis Island is the supervising of the general work of the station. I have the custody of all the records under my supervision. I am familiar with the course of procedure as to the right to examine records and documents.

Q. Will you tell us what reports are sent you from the medical division each day?

Mr. BEERS: I object to this evidence as immaterial and irrelevant and not within the issues of this action, which is to determine the legality of an alleged fine.

Objection overruled. Exception.

A. The report of admissions to the hospital, the notices of aliens who are dangerously ill, notices of deaths, any special certificates that are rendered under Section 9; that is all I can think of, offhand. They are sent daily to the executive office. The various steamship lines have representatives stationed at Ellis Island, known as landing agents, and they have been at the Island ever since I have been there.

Q. Have these agents access to the reports just mentioned?

Mr. BEERS: I object to this evidence as incompetent, immaterial and irrelevant, and not being any notice of the facts con-
114 tained in the reports.

Objection overruled; exception.

A. They have. They may examine the hospital reports. The daily hospital reports are available for their inspection in the information division, where they may examine them. They do not come to our office.

A copy of the report sent from the hospital each day containing a list of the detained patients at length, is in the information division. They have access to it there. On such a report appears, if I remember rightly, the alien's name, age and sex, the ship's arrival, the date of arrival, the cause of admission to the hospital.

The paper which you show me refreshes my recollection. It is a sample of the report which we receive daily. The columns headed "A12," B13," C14" and so on indicate the manifest list and number of alien. I mean, the ship's manifest, on which the alien's name is marked.

Our division also has custody of the minutes of the special inquiry boards. In ordinary cases, they contain the testimony of the witness before the Board of Special Inquiry.

In an ordinary case where the alien was examined as to some alleged medical defect, the minutes would contain a copy of the

doctor's certificate and the testimony of the alien, or any witness who appeared in his behalf, together with affidavits or other documents presented in his behalf. I mean, a copy of the certificate issued by the medical division, whatever doctor issued it, indicating the defect or disease.

Q. Are those minutes accessible to these landing agents?

Mr. BEERS: I object to this evidence as incompetent, im-
115 material and irrelevant and not being any notice of the facts set forth in the minutes.

Objection overruled; exception.

A. They are, upon request.

These minutes are usually transcribed within 24 hours, and either the landing agents, or any other interested person, has access to them at any time after that. Upon request, they have had such access during 1903 and from that date down. I want to say that this testimony refers to medical cases. If you have referred to any contract labor cases, they would not have access to the minutes. The testimony which I have given covers medical cases.

The greater part of all reports ultimately reaches the statistical division.

Q. Are the reports and documents in the statistical division accessible to representatives of the steamship lines?

Mr. BEERS: I object upon the ground that this evidence is immaterial and irrelevant and not evidence of notice to the steamship companies of the facts therein set forth.

Objection overruled; exception.

A. They are, upon request.

The ship's manifest eventually finds its way to the statistical division. That is accessible to landing agents, upon request. They are permitted to inspect these. That request is freely granted; so far as I know, it has never been refused.

In the ordinary instance, a special inquiry hearing is held in the case of an alien, who is detained for a medical defect, just as quickly as the case can be reached. It depends upon the number of detentions taken up in their chronological order as quickly as possible.

By Mr. DENISON:

116 The testimony that I have given with reference to the general practice down there refers to the practice during and since 1903, as well as at present.

The steamship line which owns the steamship "Zeeland" has a landing agent that comes to Ellis Island. The steamship lines which own the steamships "New York", "Arabic" and "Germanic" have such an agent. These lines have had such agents during and since 1903 at Ellis Island.

Cross-examination by Mr. BEERS:

The questions on which the Boards of Special Inquiry pass are whether or not particular aliens should be allowed to land, that is, the Board of Special Inquiry decides whether or not

a particular alien shall be allowed to land or shall be deported. That is all the Board of Special Inquiry does. In cases of diseases, which are enumerated in the Immigration Act, the certificate of the medical examiners to the facts that one of such diseases exists is conclusive on the Board, so far as the existence of that disease is concerned. If the medical examiner at Ellis Island certify that a certain alien is suffering with trachoma, the Board of Special Inquiry would be required, under the statute, to deport him. That is, if there was not any question as to his being an alien; that is right.

By Mr. DENISON:

To the best of my knowledge, there has never been any evidence before the Board of Special Inquiry whether or not the alien has the disease for which he is detained. I do not mean to say that the Board of Special Inquiry is prohibited by law from hearing any evidence as to whether the alien has the disease or not.

By Mr. BEERS:

In cases where the examining medical officer has certified
117 that an alien was suffering from trachoma, the special boards of inquiry at Ellis Island have never taken any other evidence on the subject of the existence of that disease other than the certificate of the examining surgeon.

By Mr. DENISON:

I do not know of any such case in which the Board of Special Inquiry has refused to consider any such evidence if it was offered. There have been cases in which the Board of Special Inquiry has reopened the case upon a revision of the medical officer's determination. That has happened when the alien remained in the hospital for a sufficient length of time for the doctor to be able to certify that a dangerous contagious disease no longer existed. That was a case where there was a revision, so to speak, of the medical certificate.

By Mr. FRANKFURTER:

To my knowledge, such a revision has never taken place as a result, or in consequence, of a medical consultation with physicians of steamship lines, or physicians of the aliens, or any other physicians not connected with the Government service; never so far as I know.

By Mr. DENISON:

I do not know of any cases in which physicians have been offered to testify on behalf of the alien, or the Steamship Company, as to the condition of the alien; but there have been applications made and I think re-examinations allowed of the aliens; but so far as the steamship company is concerned, there have been only one or two instances, to my knowledge, where that has occurred, where they have consulted with officers of the medical division—the doctor of the ship
118 concerned—that has occurred only in a few instances, to my knowledge.

By Mr. BEERS:

Where there has been any revision of the action of the Special Board of Inquiry in case of an alien supposed to be suffering with a loathsome or dangerous, contagious disease, that revision has been based on a revised certificate from the examining medical officer or surgeon. Before the Special Board of Inquiry re-considered its action, the medical officers of the Bureau of Immigration revised their certificates with respect to the physical condition of the particular alien.

By Mr. DENISON:

I offer in evidence a copy of Department Circular No. 58.

Mr. BEERS: I object to the admission of this Circular, on the ground that it is incompetent, irrelevant and immaterial, in that on its face it shows that it does not afford the Steamship Company a reasonable opportunity to be heard, that it seeks to deprive the plaintiff of its property without due process of law, and is deprived of its right to a trial by a Court and jury,—all in violation of the plaintiff's rights under the United States Constitution.

Objection overruled: exception.

Paper admitted in evidence and marked "Defendant's Exhibit D", and, by stipulation, written into the record as follows:

119 "DEF'T'S EX. D."

"Procedure for Disposition of Fines on Account of Bringing Diseased Aliens to the United States.

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

Bureau of Immigration.

JANUARY 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of Section 9 of the Immigration Act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathsome or dangerous contagious disease shall state in terms whether, in his judgment, the

'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph hereof, the commis-
120 sioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner, or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz:

Department of Commerce and Labor, Immigration Service.

Office of ——— ———,
Port of ——— ———,
——— —, 190—.

To ——— ———, ——— of the steamship ——— ———:
(Master, agent, owner, or consignee.)

In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Names of Alien: ——— ——— Steamship: ——— ——— Disease: ———

(Signature) ——— ———,
121 (Title) ——— ———.

Received the above notice ——— ———, 190—, at ——— ——— M.
(Witness) ——— ———.
———,
11-1640.

The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the

triplicate to be delivered to the collector of customs, who will withhold clearance papers until the deposit is made.

3. Deposit.—The special deposit of $100, required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical certificate and duplicate notice, in order that such action may be taken as the evidence requires.

4. Stay of Action.—If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2 of this circular, the deposit of $100, has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the
122 evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded together with the certificate of the examining surgeon, to the Commissioner General of Immigration, for presentation to the Secretary of Commerce and Labor by the said commissioner or inspector in charge, who shall at the same time present his written views as to whether the said fine should be imposed. If no evidence is submitted prior to the expiration of the said fourteen days, then said commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

5. Final Proceedings.—Upon the receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such data as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100, deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640.

V. H. METCALF, *Secretary.*

By Mr. DENISON:

I offer in evidence a letter, dated April 5, 1907, addressed to Honorable H. L. Stimson, United States Attorney, New York, signed F. P. Sargent, Commissioner General.

Mr. BEERS: I object to the admission of this letter, upon the ground that the number of fines which have been imposed or collect[illegible] under Section 9, is utterly irrelevant to the issues in
123 this action.

Objection overruled; exception.

Letter received in evidence and marked "Defendant's Exhibit E," and, by stipulation, written into the record, as follows:

"DEF'T'S EX. E.

In answering refer to No. 51440.

DEPARTMENT OF COMMERCE AND LABOR.
BUREAU OF IMMIGRATION AND NATURALIZATION.
WASHINGTON, *April* 5, 1907.

Hon. H. L. Stimson, United States Attorney, S. D. N. Y., New York, N. Y.

SIR: I desire to acknowledge the receipt of your letter of the 29th ultimo, stating that you will be glad to receive any information which the Bureau can furnish as to rejections of diseased aliens prior to March 3, 1903, and also as to the number of $100 fines incurred under section 9 of the act approved on that date.

The figures have been compiled at the expense of considerable pains and are as follows:

Aliens Debarred on Account of Loathsome and Dangerous Contagious Diseases (All Ports) from July 1, 1897, to Feb. 28, 1903.

Fiscal year ended June 30,	1898	258
Do.	1899	348
Do.	1900	393
Do.	1901	309
Do.	1902	709
July 1, 1902, to February 28,	1903	1223

Aliens Debarred on Account of Loathsome and Dangerous Contagious Diseases (All Ports) from Mar. 1, 1903, to Feb. 28, 1907.

March 1, 1903, to June 30,	1903	550
124		
Fiscal year ended June 30,	1904	1560
Do.	1905	2198
Do.	1906	2273
July 1, 1906, to Feb'y 28,	1907	2773

Amount of Fines Incurred Under Section 9, Act Approved Mar. 3, 1903, from that Date to February 28th, 1907.

Baltimore	$5,600	Boston	$7,500
Galveston	1,200	Jacksonville, Fla.	100
Key West, Fla.	800	New Orleans	1,900
New York	85,400	Philadelphia	7,300
Portland, Me.	300	Port Townsend, Wash.	1,000
San Francisco, Cal.	1,400		
Total			$112,500.00

The figures in the final statement, while approximate, are substantially correct, any slight discrepancy being insufficient to effect the integrity of the statement as a whole.

It is hoped that this data will be of assistance to you in connection with the cases now pending in your district.

Respectfully, F. P. SARGENT,
Commissioner General."

Mr. DENISON: I offer in evidence the following papers:

(1) A letter, dated December 24, 1903, addressed to the Commissioner General of Immigration, Washington, D. C., signed Joseph Murray, Acting Commissioner.

(2) A letter, dated December 26, 1903, addressed to the Commissioner of Immigration at Ellis Island, and signed George B. Cortelyou, Secretary.

125 (3) A letter, dated December 28, 1903, addressed to the Collector of the Port, New York City, signed Joseph Murray, Acting Commissioner.

Mr. BEERS: I object to these papers being received in evidence as the basis of a fine, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard: these proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by a Court and jury, to which it is entitled under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits F I, F II, and F III.

"DEF'T'S EX. F I."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *December* 24, 1903.

Commissioner General of Immigration, Washington, D. C.

126 SIR: I herewith forward for such action as the Secretary of Commerce and Labor shall deem proper, *copy of medical certificate*, date December 23, 1903, of Surgeon-in-Charge showing that Alfons Van Geetson, who arrived December 22 by S. S. "Zeeland" (Red Star Line) was suffering from trachoma at the time of

foreign embarkation, and that its existence could have been detected at such time.

Respectfully,

(Signed) JOSEPH MURRAY,
Acting Commissioner.

(Inclosure No. 5149.)

(Endorsement:) No. 19636. Dec. 24/03. Subject: To Commissioner General of Immigration transmitting doctor's certificate in case of Alfons Van Geetson."

"DEF'T'S EX. F II."

No. 43213.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *December* 26, 1903.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: In reply to your letter No. 19,636 of December 24, 1903, *and in view of the facts submitted therewith, it appears to my satisfaction* that the alien Alfons Van Geetson, a native of Belgium, ex. S. S. "Zeeland" December 22, 1903, was afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected at said time.

127 I therefore direct that the Red Star Line, owners of said vessel, pay to the Collector of Customs of the District of New York, being the port at which said vessel arrived, the sum of $100, in conformity with Section 9 of the Act approved March 3, 1903, and that you certify this sum to said Collector for collection.

Respectfully,

GEO. B. CORTELYOU, *Secretary,*
Per S.

WVL

(Endorsement:) 19,636. Secretary of Commerce & Labor. Dec. 26, 1903. Imposing $100.00 fine case of Alfons Van Geetson. S. S. Zeeland Red Star Line. United States Immigration Service. Dec. 27 10-32 A. M. 1903. Chief Clerk's Office. Ellis Island, N. Y. H

128 "DEF'T'S EX. F III."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *Dec.* 28, 1903.

Collector of the Port, New York City.

SIR: The Secretary of Commerce and Labor *has imposed upon the Red Star Line a fine of $100,* because he is satisfied, in accordance with certificate dated December 23, 1903, of U. S. Marine

Hospital Surgeon in Charge that the alien Alfons Van Geetson, who arrived by S. S. "Zeeland" December 22, 1903, was afflicted at the time of foreign embarkation with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 43213 of December 26, 1903, I hereby certify to you this fine for collection in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,

(Signed) JOSEPH MURRAY,
Acting Commissioner.

VI.

(Blank Endorsement:) Department of Commerce and Labor. Immigration Service—Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of inclosures —.

Mr. DENISON: I offer in evidence the following:

(1) A paper, dated July 5, 1905, addressed to the American Line, owners of the Steamship, "New York."

(2) A paper marked "Verification of Landing", No. 19,636.

(3) A letter, dated July 6, 1905, addressed to Honorable Robert Watchorn, Commissioner of Immigration, and signed by the
129 Special Deputy Collector.

(4) A letter, dated July 7, 1905, addressed to Hon F. P. Sargent, Commissioner General of Immigration, Washington, D. C., signed by the Commissioner of Immigration, New York.

(5) A letter, dated July 7, 1905, addressed to Hon. Robert Watchorn, Commissioner of Immigration, signed by N. N. Stranahan, Collector.

(6) A letter, dated July 8, 1905, addressed to the Hon. F. P. Sargent, Commissioner General of Immigration, at Washington, signed Robert Watchorn, Commissioner.

(7) A letter, dated July 8, 1905, addressed to the Commissioner of Immigration at Ellis Island, signed by Lawrence O. Murray, Assistant Secretary.

(8) A letter, dated July 11, 1905, addressed to the Hon. N. N. Stranahan, Collector of the Port of New York, and signed Lawrence O. Murray, and the certificate endorsed thereon, signed Robert Watchorn, Commissioner.

(9) A letter, dated July 12, 1905, addressed to the American Line, and signed Robert Watchorn, Commissioner.

Mr. BEERS: I object to these papers being received in evidence as a basis of a fine, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff, or the right to demand a deposit. They show on their face that the plaintiff has had no opportunity to be heard, and no notice of an intention to impose a fine before its property was demanded and taken. These proceedings cannot support the taking of plaintiff's property and the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law,
in contravention of its rights under the Fifth Amendment of
130 the Constitution of the United States, and deprive it of its right to a trial by Court and jury under the Federal Consti-

tution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively Defendant's Exhibits G I, G II, G III, G IV, G V, G VI, G VII, G VIII and G IX.

131 "DEF'T'S EX. G I."

Form 507.

Notice of Liability for Fine on Account of Bringing Deceased Alien to the United States.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.)

OFFICE OF COMMISSIONER,
PORT OF ELLIS ISLAND, N. Y. H. *July* 5, 1905.

To American Line, Owners of the Steamship "New York," July 2, 1905:

(Master, agent, owner, or consignee.)
9 Broadway, New York City.

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port, within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship:	Disease:
Dolly G. Nassif.	"New York."	Trachoma.

SM[illegible]

——— ———,
(Name.)
Commissioner.
(Official title.)

132 Received the above notice July 5, 1905, at 3.55 P. M.
(Time.)
Per A. LEDERER.

Witness:
SAML. YOUNG.

11-1641.

"DEF'T'S EX. G II."

19636.

Verification of Landing.

Department of Commerce and Labor, Immigration Service, Port of New York.

Name of alien: Nassif, Dolly. (Cherbourg.)
Arrived per S. S. New York. Line: American.
Date of arrival, July 2/05.
Date of application for relief or deportation: ——.
Manifest group and number: 24-22.
Age: 11. Sex: Female. Married or single: Single.
Occupation: ——.
Able to read: No. Able to write: No.
Citizen of Turkey.
Race: Syrian.
Final destination: Sioux City, Iowa, 1412—4 Ave.
Who paid passage? Father.
Money: ——.
Whether in United States before: No.
Health: Good.
Det. in Hospital: ——.
(N. B.—If admitted, state whether on primary inspection, after temporary detention, or by Board.)
Remarks: Father, George Nassif, U. S. Cit.

WM. E. JUNKER,
Chief of Statistical Division.

Findings of Medical Division: ——.
Final disposition: ——.
11-1598.

133 "DEF'T'S EX. G III."

UNITED STATES CUSTOMS SERVICE.
PORT OF NEW YORK, *July* 6, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: Referring to notices of liability for fines under section 9, Act of March 3, 1903, in the case of the S. S. "Bluecher"; alien passenger Ludwig Wieczorek; S. S. "Umbera"; alien passenger John Stupadas; and S. S. "New York"; alien passengers—Elias Bashara; Dolly G. Nassif; and Joseph Rizk, which notices were received by the steamship companies on July 5, I have to state that the fines referred to therein have not been deposited with this office up to 4.30 P. M. this day, July 6th.

Respectfully,
(Signed) ——,
Special Deputy Collector.

Copy.

"DEF'T'S EX. G IV."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 7, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to enclose for your consideration, two certificates dated July 3, 1903, by the P. H. and M. H. Surgeon in Charge here, to the effect that Elias Bashasa and Dolly G. Nassif, ex S. S. "New York," July 2, 1905, have trachoma, a dangerous, con-
134 tagious disease; that said aliens were afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time.

I also inclose duplicate notices served on the line at 3.55 P. M. July 5, 1905, in accordance with Department Circular 58. The Collector informs me in a letter dated the 6th instant, that the $200. deposit required by said circular to be made as a condition precedent to the line's right to submit additional evidence, has not been made within the prescribed period of 24 hours.

I therefore recommend that the fine of $100. in each case be imposed.

Respectfully,

_____,
Commissioner.

SMR.
Incl. 3936.

(Blank endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York N. Y., —— ——, 190–. —— ——, Commissioner. Subject: ——. No. of Inclosures —.

135 "DEF'T'S EX. G V."

EB.

Office of the Collector.

UNITED STATES CUSTOMS SERVICE. M.
PORT OF NEW YORK, *July* 7, 1905.

Hon. Robert Watchorn, Commissioner of Immigration:

SIR: I have to advise you of the deposit with this office to-day of the sum of three hundred dollars by the American Line, owners of the S. S. "New York": for which sum the vessel has become liable under section 9, Act of March 3, 1903, in the case of the alien passengers, Elias Bashara; Joseph Rizk; and Dolly G. Nassif; also of the

deposit of the sum of one hundred dollars in the case of the S. S. "Umbria"; alien passenger, John Stupadas.

Respectfully,

N. N. STRANAHAN, *Collector.*
J. E. H.

(Endorsement:) 19636. N. Y. Jul- 7, 1905. Collector of Customs Advises deposits made in case Elias Bashara, Jos. Rizk & Dolly G. Nassif. S/S New York & John Stupadas S/S Umbria. Referred to Law Clerk (E. R.). Delivered 1.05 M A Jul- 8 8.53 A. M.

136 "DEF'T'S EX. G VI."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 8, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to refer to my letters No. 19,635 of yesterday, transmitting medical certificates in the cases of John Stupadas, ex S. S. "Umbria," Elias Bashara and Dolly G. Nassif, ex S. S. "New York," July 2, 1905, reporting that the Collector had informed me that the deposit required by Circular No. 58, had not been made within the prescribed period of 24 hours from service of notice on the line.

I have this morning received a further letter from the Collector, stating that the deposit of $100. was made yesterday by the Cunard Line and $200. by the American Line on account of these cases.

Possibly in view of this you may desire to allow fourteen days within which to file additional evidence.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

SMR

(Blank Endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of inclosures —.

137 "DEF'T'S EX. G VII."

No. 48969.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19,636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex S. S. "New York" July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

Respectfully,

LAWRENCE O. MURRAY,
Assistant Secretary.

F. W.

WVL.

(Endorsed:) 19636. Secretary of Commerce and Labor. Jul- 8, 1905. Imp. $200. fine case of Elias Bachasa & Dolly G. Nassif ex New York, July 2, 1905. Referred to Law Clerk (E. I.). Delivered 12.25 M A Jul- 10 8.31 A. M.

138 "DEF'T'S EX. G VIII."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 11, 1905.

Hon. N. N. Stranahan, Collector, Port of New York, New York City.

SIR: I am in receipt of a letter from the Assistant Secretary of Commerce & Labor, of which the following is a copy:

No. 48969.

WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19,636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex S. S. "New York," July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200., as provided by Section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

139

Respectfully,

(Signed) LAWRENCE O. MURRAY,
Assistant Secretary.

WVL.

Pursuant to the foregoing direction I hereby certify to you the sum of $200. for collection from the American Line, owners of the S. S. "New York."

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

(Endorsement in blank same as on Ex. G VI.)

"DEF'T'S EX. G IX."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 12, 1905.

American Line, 9 Broadway, New York City.

SIRS: After careful consideration of all the facts relating to the aliens Elias Bashara and Dolly G. Nassif, who arrived on the steamship "New York" July 2, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100. has been imposed in each case, and the

Collector of the Port has been so informed. This action has been taken in conformity with Section 9 of the Act approved March 3, 1903.

This notice is sent for your information.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

G.

(Endorsed in blank the same as Ex. G VI.)

140 Mr. DENISON: I offer in evidence the following papers:

1. A letter dated July 10, 1903, addressed to the Commissioner General of Immigration, Washington, D. C. signed "William Williams, Commissioner."

2. A letter dated July 13, 1903, addressed to the Collector of the Port, New York City, signed "William Williams, Commissioner."

3. A letter dated July 11, 1903, addressed to the Commissioner of Immigration at Ellis Island, and signed, "George B. Cortelyou, Secretary."

Mr. BEERS: I object to these papers being received in evidence, upon the ground that they are entirely incompetent, irrelevant and immaterial, to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard. These proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and to deprive it of its rights to a trial by a Court and jury, to which it is entitled under the Federal Constitution. Under the provisions of the Federal Constitution, a fine can only be imposed by the judiciary, and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits H-1, H-2 and H-3.

141 "DEF'T'S EX. H 1."

No. 17837.

Department of Commerce and Labor, Immigration Service.

OFFICE OF COMMISSIONER OF IMMIGRATION,
NEW YORK, N. Y., *July* 10, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: Referring to Section 9 of the new law, I enclose a certificate signed by Dr. Geo. W. Stoner, Surgeon in charge of our Medical Division, showing that Johann Klaara, a native of Russia, who arrived July 5, 1903, on the S. S. "Arabic," of the White Star Line,

had trachoma at the time of embarkation. I am satisfied that the existence of such disease might have been detected by means of a competent medical examination at such time. I recommend that the Secretary of Commerce and Labor impose a fine of $100.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

(Inclosure U.)
(Endorsed:) 19636. July 10.

142 "DEF'T'S EX. H II."

No. 17837.

JULY 13, 1903.

Collector of the Port, New York City.

SIR: *The Secretary of Commerce and Labor has imposed upon the White Star Line a fine of $100.*, because he *is satisfied* that the alien Johann Klaara, a native of Russia, who arrived July 5, 1903, by S. S. "Arabic" of that line, was at the time of embarkation afflicted with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 39,486 of July 11, 1903, I hereby certify to you this fine for collection, in accordance with Section 9 of the act of March 3, 1903.

Respectfully,

____ ____,
Commissioner.

JAM.

"DEF'T'S EX. H III."

No. 39486.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *July* 11, 1903.

Commissioner of Immigration, Ellis Island, N. Y. H.

MY DEAR SIR: The Department is in receipt of your letter of the 10th instant, No. 17,837, inclosing certificate of a Public Health and Marine Hospital Surgeon in the case of the alien Johann Klaara, aged 30, a native of Russia, ex. S. S. "Arabic" July 5, 1903, from which certificate it would appear that said alien was afflicted with trachoma at the time of embarkation.

143 You are, therefore, instructed to impose, and certify to the Collector of Customs for collection, a fine of $100.00 in the case of this alien, in conformity with section 9 of the Act approved March 3, 1903.

Very truly yours,

GEO. B. CORTELYOU, *Secretary.*

(Endorsement:) 19636. Treas. Secretary of Commerce & labor. July 11/03. Imposing fine $100.00. Case Johann Klaara. Ex. "Arabic" 7/5/03. U. S. Immigration Service. Jul- 12 10:51 A. M. 1903. Executive Office, Ellis Island, N. Y. H.

Mr. DENISON: I offer in evidence the following papers:

1. A letter dated October 5, 1903, addressed to the Commissioner General of Immigration, Washington, D. C., and signed "William Williams, Commissioner."

2. A letter dated October 6, 1903, addressed to the Commissioner of Immigration at Ellis Island, signed "George B. Cortelyou, Secretary."

3. A letter dated October 8, 1903, addressed to the Collector of the Port, New York City, signed "William Williams, Commissioner."

Mr. BEERS: I object to these papers being received in evidence, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard. These proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its
111 rights under the Fifth Amendment of the Constitution of the United States, and to deprive it of its right to a trial by a court and jury, to which it is entitled under the Federal Constitution. Under the provisions of the Federal Constitution, a fine can only be imposed by the judiciary, and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits I-1, I-2, and I-3.

DEF'T'S EX. I I."

No. 19636.

OCTOBER 5, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: I submit for such action as the Secretary of Commerce and Labor may deem proper, a copy of medical certificate dated October 3, 1903, issued by Surgeon-in-Charge, showing that Paolo Necchi who arrived by S. S. "Germanic" of White Star Line (list D, No. 18) on October 2, 1903, was suffering from trachoma, and that such disease could have been detected at the time of embarkation.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

(Enclosure 2294.)
JM.

(Endorsed:) No. 19636. Oct. 5. —— —, 190–. —— ——. Subject ——.

145 "DEF'T'S EX. I II."

No. 41782.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *Oct.* 6, 1903.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: In reply to your letter of the 5th instant, No. 19,636, and in view of the facts submitted therewith, it would appear that the alien Paolo Necchi, a native of Italy, ex. s/s "Germanic," Oct. 2, 1903, was afflicted with trachoma at the time of embarkation.

You are therefore instructed to impose and certify to the Collector of Customs, for collection from the White Star Line, a fine of $100.00 in conformity with section 9 of the Act approved March 3, 1903.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*
Per R. S.

(Endorsement:) 19636. Oct. 6, 1903. Secretary of Commerce & Labor. Author. imposition of $100.00 fine against White Star Line case of Paolo Necchi. U. S. Immigration Service. Oct. 8 8:43 A. M. 1903. Executive Office, Ellis Island, N. Y. H. 20210.

146 DEF'T'S EX. I III."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y.

Collector of the Port, New York City.

SIR: Pursuant to the direction of the Secretary of Commerce and Labor, *I have imposed* upon the White Star Line a fine of $100, because he is satisfied that the alien Paolo Necchi, ex. S. S. "Germanic" October 2, 1903, was afflicted with trachoma, a dangerous, contagious disease, at the time of foreign embarkation, as certified on October 3, 1903, by the Surgeon-in-Charge of our Medical Division; and pursuant to Department letter No. 41,782 of October 6, 1903, I hereby certify to you this fine for collection, in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

VL.

Mr. DENISON: Does the plaintiff admit that after July 11, 1905, the defendant paid over into the treasury of the United States the money referred to in the 17th cause of action of the International Mercantile Marine Company's case?

Mr. BEERS: Without admitting the materiality of the evi-
147 dence as to such payment, the plaintiff admits the fact of the payment.

The testimony of ARTHUR LEDERER, a witness for the plaintiff, taken by deposition on May 22, 1907, was read in evidence, pursuant to stipulation of the parties.

Direct examination by Mr. BEERS:

I was connected with the International Mercantile Marine Company in the month of December, 1903, and in the month of July 1905. I had been connected with that company for eighteen years, since its organization. I am not sure of the exact date, but when the International Mercantile Marine Company succeeded the International Navigation Company, I was taken over as one of the old officers, holding the same position with the new company. The International Mercantile Marine Company was organized prior to March 1, 1903. In December, 1903, and in July, 1905, I was manager of the passenger department of the International Mercantile Marine Company. I am not now connected with the company; I resigned on April 23, 1906. From the date of the organization of the International Mercantile Marine Company, down to the date of my resignation in 1906, I held the office of manager of the passenger department; as such manager I had charge of matters which arose in connection with the immigration laws.

The Red Star Line is one of the lines controlled by the International Mercantile Marine Company; The American Line is another line under the control of that company. My duties as manager of the passenger department included passengers by the ships of both the Red Star and American Lines, from the date of the organization of the International Mercantile Marine Company down to the date of my resignation. If any letters or notices were sent from any official of the United States Government to either the Red Star or the American Lines, they would come to me.

148 Q. I show you a letter dated December 29, 1903, to the Master of the Steamship "Zeeland," of the Red Star Line, signed "F. E. Hamilton, Solicitor for the Collector," and ask whether that was a letter which came to you on or about December 29, 1903, (handing witness letter).

A. Yes, sir.

Mr. BEERS: I offer the letter in evidence.

Letter is received in evidence and marked "Plaintiff's Exhibit 3."

By stipulation the letter was entered in full in the record, as follows:

"United States Customs Service, Port of New York.

Office of the Collector, Law Division, Solicitor to the Collector.

DEC. 29, 1903.

Master S. S. "Zeeland," c/o Red Star Line, Empire Building, Manhattan.

SIR: The Secretary of Commerce & Labor has imposed a fine of one hundred dollars upon the S/S "Zeeland" because it is satisfied that the alien Alfons Van Geetson, who arrived on the 22nd instant, was at the time of foreign embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law the vessel cannot clear from this port until this fine is paid.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector.

3d class $100
Cash ticket JF.
Man. 326.
Ticket No. 32773.

Cashier's office
Paid
Jan. 27, 1904
Custom House N. Y."

Neither the Red Star Line nor the International Mercan-
149 tile Marine Company received any notice from any Government officials to the effect that a fine was demanded in the case of Alfons Van Geetson before this letter, Plaintiff's Exhibit 3, was received by the company; that was not customary; this was the only notice of the kind, first and last; this letter was the first notice of any description received by the company in respect to the imposition of any fine in the case of Van Geetson. The company paid the sum of $100, demanded in this letter (Plaintiff's Exhibit 3); it made the payment because they did not feel like holding up the ship; passengers were booked and cargoes were to be taken care of. It would simply have meant the clearance of the ship not being given. The refusal of clearance would have had the effect of putting the business of the Red Star Line to a standstill; it would put us out of business; every hour of the day would have meant so much money; a question of a hundred or several hundred dollars could not have prevented us from paying them rather than have the ship held up.

Q. I show you a notice dated July 5, 1905, directed to the American Line, owners of the Steamship "New York," and signed by Robert Watchorn, Commissioner, and ask whether this paper was received by the International Mercantile Marine Company on or about this date, July 5, 1905.

A. Yes, sir; it was received by me.

MR. BEERS: I offer this letter in evidence.

Letter received in evidence and marked Plaintiff's Exhibit 4."

(Blank endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York, N. Y., ——— ———, 190–. ——— ———, Commissioner. Subject: ———. No. of Inclosures —.

By stipulation of the parties the letter was entered in the record in full, as follows:

150 "Pl'ff's Ex. 4.

Original.

Notice of Liability for Fine on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.) 7/6

Office of Commissioner,
Port of Ellis Island, N. Y. H., *July* 5, 1905.

Imm'ig Fine
127 W.
July 2, 1905.

To American Line, Owners of the Steamship "New York"
(Master, Agent, Owner, or consignee.)
9 Broadway, New York City.

In conformity with the requirements of the Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the Collector of Customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred

dollars as security for the payment of the said fine, should it be imposed.

Name of Alien:	Steamship:	Disease:
Dolly G. Nassif.	"New York" 127.	Trachoma.

(International Mercantile Marine Company, Jul- 7, 1905, Paid.)

ROBERT WATCHORN.
(Name)
Commissioner.
(Official Title)

24-22
Paid
Jul- 7, 1905.

N.

Protested
M. J. CARTER.

SMR.

151 Received the above notice July 5", 1905, at 3:50.
(Time.)

Witness:
SAMUEL YOUNG.

Per A. LEDERER."

11-1641.

This notice was the first notice of any description received by the owners of the Steamship "New York" with respect to the exaction of any sum of money from the company by reason of the bringing in of the alien Dolly G. Nassif; this was the only notice received by the company in respect to the demand in the case of this alien. The sum demanded in this case was paid to the Collector of this port by the owners of the Steamship "New York." It was paid for the same reason as stated in the previous case, because we did not care to have the ship held up. Clearance would have been held up unless we had paid the amount of the fine imposed upon us. It would have entailed serious losses upon the business of the company if clearance had been refused to the steamship "New York," as I have indicated in my previous testimony.

Q. Were these sums demanded by these (indicating Plaintiff's Exhibits 3 and 4) paid by the company willingly?

A. Well, there was no alternative. The payment of the $100 which was demanded by this notice, (Plaintiff's Exhibit 4) was made through our Custom House brokers; they were Perry & Ryer.

Mr. BEERS: I offer in evidence a copy of such letter.

Mr. DENISON: Defendant admits that the paper offered in evidence is a true copy of a paper the original of which was filed with the Collector of Customs on or about July 7, 1905.

Letter received in evidence and marked Plaintiff's Exhibit 5.

152 By stipulation of the parties, the letter was entered in the record in full, as follows:

"PL'FF'S EX. 5.

Copy.

John C. Ryer. Edward T. Coons.

Cable Address
"Architrave"
Perry, Ryer & Co.,
Customs & Insurance Brokers and Forwarders.

Boston Office: Stone & Downer Co., 131 State Street.

Phil. Off.: E. H. Bailey & Co., 406 Library St.

Import Agents N. Y. O. & W. R. R., Ontario Dispatch and Ontario & Michigan Central Line.

Correspondents in all parts of the World. 66, 68 and 70 Beaver St. Coffee Exchange.
Telephone, 392 Broad.

NEW YORK, *July* 7, 1905.

Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $300, imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States the following passengers:

Dolly G. Nassif.
Elias Bashara.
Joseph Risk

on the Steamship "New York" arrived July 2nd, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

INTERNATIONAL MERCANTILE MARINE CO.,
JOHN C. RYER, *Att'y.*"

Cross-examination by Mr. DENISON:

It was a part of my duty, as manager of the passenger department, to deal with questions affecting immigrants; that was in my charge for about thirty-three years. In the conduct of that branch of my duty it was absolutely my practice to familiarize myself with

153 the immigration laws. I familiarized myself with such laws as soon as they became available, and in particular I fami-

liarized myself with the Act of March 3, 1903; I was familiar with the provisions of that act shortly after its passage.

(The witness being shown Defendant's Exhibit C)—I have received papers similar in form to that which you show me; they were regularly received by my company.

My company is the owner of the Red Star Line, of which the Steamship "Zeeland" is a part. In December, 1903, the office was at 73 Broadway.

By Mr. BEERS:

During the years 1903 and 1905, the Red Star Line and American Line had landing agents at Ellis Island, we had an agent and an assistant; when I say that, I refer to the American and Red Star Lines; the American and Red Star Lines were associated in business prior to the formation of the International Mercantile Marine Company. The duties of the landing agent at Ellis Island were to accompany the immigrants and their baggage from the steamer's pier to Ellis Island, seeing that none of them escaped, delivering them any letters or telegrams addressed to them, paying them any moneys addressed to them, attending to their forwarding to destination by rail or otherwise. These were their chief duties; it is not supposed to be the duty of the landing agent to receive communications addressed to the company by the Government on the company's behalf; the landing agent was to attend to the speedy departure of the immigrants towards their destination; the landing agent was not authorized to represent the company in matters of business other than such as related to the departure of passengers from Ellis Island, and the delivery of mail, railroad tickets, telegrams, etc., addressed to them.

Cross-examination by Mr. DENISON:

154 When I instructed him to do so, or when I was interested particularly in some case or cases, the landing agent would try to ascertain the cases of my immigrants who were sent to the hospital at Ellis Island. The notices such as you have shown me were frequently handed to him, and passed over to me or kept by him. Very often I did not get to see any of these, because they were immaterial, they were not of sufficient importance for me to look after them. I determined whether they were of sufficient importance; these are all matters of form; I should say that these notices of which you have shown me a copy are to conform with some rules or regulations at Ellis Island; they are of no weight or consequence to the manager of the passenger department, whose duties are very varied. I never took any note of papers of that character (Defendant's Exhibit C) until they had been delivered to me in person, either by the personal messenger of the Commissioner of Immigration or the Collector of the Port; then I knew it was a matter of importance.

Q. I show you a paper marked Defendant's Exhibit E IX, and ask you whether or not you can say you have received the original thereof.

A. I may have received such a notice; it is very likely I received the original of which this is a copy.

Q. Now, when you received Plaintiff's Exhibit 4, or after you received that exhibit, did you, or anybody on behalf of the company, ask for any hearing upon the subject of that letter?

Mr. BEERS: I object to the question as immaterial, irrelevant and incompetent, upon the ground that there is no duty resting upon the steamship company to ask for a hearing. The letter does not offer a hearing.

Objection overruled; exception.

A. I do not think so.

155 Q. Did you offer to submit to the Government authorities any evidence bearing upon the subject referred to in that letter.

Same objection; same ruling; exception.

A. No.

Q. Did you ask for any extension of the time limited in that notice,—Plaintiff's Exhibit 4?

Same objection; same ruling; exception.

A. No.

By Mr. BEERS:

Q. In response to the question by the District Attorney, you have testified that certain notices may have been sent to the company by the landing agents of the company at Ellis Island;—did you refer to notices of the same character as Defendant's Exhibit C?

A. Yes, sir.

The Company's landing agent has no power to represent the company in matters relating to impositions of fines on the Company by the United States Government, or in relation to exactions of any description by the Government. He has no authority to receive communications from any Government official in reference to fines or exactions.

By Mr. DENISON:

Q. Your company reimburses the Government for the hospital expenses of your immigrants at Ellis Island, does it not?

Mr. BEERS: Objected to as irrelevant.

Objection overruled; exception.

A. Yes, sir.

Q. And periodically you received bills from the Government for such expenses?

Same objection; same ruling; exception.

A. Yes, sir.

Q. How did you check those bills?

156 Same objection; same ruling; exception.

A. We look up the passenger manifest, first to see the name of the passenger appears on it, and whether it shows the date of arrival, and if the date of arrival, which means practically the date of admission to the hospital, correspond, and the date of his deportation, if deported, corresponds with the notice of the day of his dismissal from the hospital, this gives us the period of hospital detention, thereby enabling us to tell about whether it was right or not. We do not take any means at all to test the question whether any such alien was in fact sent to the hospital; we consider those matters *bona fide*.

Q. But you have received some reports, in the form of Defendant's Exhibit C?

Same objection; same ruling; exception.

A. Yes, sir, that has been true during and since 1903.

Mr. DENISON: I offer in evidence the letter dated July 2, 1905, addressed to the Agent American Line signed "Geo. W. Stoner".

Mr. BEERS: I object to the admission of this paper in evidence on the ground that it is incompetent, irrelevant and immaterial and does not inform the plaintiff of any intention of imposing a fine.

Objection overruled; exception.

Paper received in evidence marked "Defendant's Exhibit K". Paper is set forth in the record in full by stipulation as follows:

"D'FD'T'S EX. K. May 28-07.

(Copy.) D.

Surgeon's Notice that Passenger has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service.

Book No. 31. Medical Division.

PORT OF NEW YORK, *July* 2, 1905.

Agent American Line, 9 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving July 2,
157 1905, per Steamship New York and this day placed in hospital, for reasons given below:

Immigrant.

18—Matti Isakkila 24 Russia —Disease of eyes.
19—Delly G. Nassif 11 Turkey— " " "

Long Island College.

20—Assif Abraham 11 Turkey—Disease of eyes.
21—Giacomo Cossolo 29 Italy — " " "
22—George Assir 20 Turkey— " " "
23—Michael Assir 16 " — " " "

Respectfully,
(Signed) GEO. W. STONER,
Surgeon in Charge.
Y. S."

Plaintiff without admitting the materiality, relevancy or competency of the documents admits that a notice similar in form to the Defendant's Ex. K, this date, was issued by the Surgeon in charge at the Port of New York of the Immigration service in the case of the alien Johann Klaara brought by the Steamship "Arabic" on or about July 5, 1903; and that the said notice was forwarded to the plaintiff and received by it on or about the date of the arrival of the said alien.

The Testimony of FRANCIS E. HAMILTON, a witness for the plaintiff, taken by deposition on May 29, 1907, was read in evidence, pursuant to stipulation of the parties.

Direct examination by Mr. BEERS:

I am the solicitor to the Collector of this port, and have been in that position for five years past. I am familiar with the immigration law passed in March, 1903, as far as it relates to the Port of New York. I am familiar with the methods adopted by the U. S. Government for the enforcement of that law, so far as they relate to the Port of New York and the law division of the Collector's
158 office. So far as the Collector of the Port of New York has any duty to perform under the terms of that Immigration Act, or with respect to immigration, I am familiar with the method in which he performs that duty; I am adviser in respect to any question which may come up. I am familiar with the provisions of the Immigration Act of 1903. The rule adopted by the Collector's Office in collecting fines under Section 9 was as follows: Notice was sent to the steamship company bringing in a person, upon receipt of advice from the immigration authorities that any alien was afflicted with a loathsome or dangerous contagious disease, which notice was to the effect that the steamship company was liable to a fine of $100 for having so brought in, in violation of Section 9, such alien. I think this was the rule adopted before the issuance of Circular 58, and was the rule which was first adopted in the Collector's office since the law of 1903 went into effect. The first notice which I speak of as having been sent to the steamship companies was signed by me personally.

Q. I show you a letter, Plaintiff's Exhibit 3, and ask you if that letter is one of such notices as you have testified to as having been issued prior to the promulgation of Circular 58.

A. Yes, sir. When such a notice as the one you have shown me has been issued to steamship companies, I think that the Collector has never failed to collect the sum demanded; I know he has not; he has never waived or eliminated the fine or exaction in any case. Representatives of the steamship companies protested to me against these exactions under Section 9 prior to the issuance of Circular 58, several times, verbally. I think that in every case when such a protest or objection was made, I stated that the fine would not be eliminated, but I know it never was eliminated; that was the uni-
159 form rule of the Collector's office. This notice which you have shown me was issued in accordance with the rule which was adopted by the Collector prior to the promulgation of Circular 58.

In every case the sum mentioned was demanded as an exaction for the issuance of clearance. Quite a large number of notices similar in character to the notice Plaintiff's Exhibit 3 were signed by me and sent to steamship companies, between the time when the Immigration Act of 1903 went into effect and the date of the issuance of Circular 58—some hundreds, as I recall them. I am familiar with the provisions of Circular 58 of the Department of Commerce and Labor. I am familiar with the rule which was adopted and pursued by the Collector of the Port of New York in respect to the collection of exactions under Section 9 of the Immigration Act after Circular 58 was issued. Subsequent to the issuance of Circular 58, notices in the form of Plaintiff's Exhibit 4, or exact duplicates thereof, were sent by the Commissioner of Immigration at this port to the Collector, in cases where payment was demanded under Section 9; one went to the steamship company; I think they were both originals. When a notice in form like Plaintiff's Exhibit 4 was received by the Collector, in every case he exacted a payment or a deposit of $100 before issuing clearance to the vessel named in the notice. In each case he exacted the money, whatever it was. I understand that that was the uniform custom of the Collector, from the time of the issuance of Circular 58 to now. These notices from the Commissioner of Immigration of this Port, like Plaintiff's Exhibit 4, came to me personally. A series of protests against the exactions under these notices were made to the Collector, but in every case, notwithstanding any protest or objection, the sum specified was collected before clearance was issued; it was never waived or eliminated. As many deposits were taken
160 after the issuance of Circular 58 as there were notices; there was a large number of notices; there were several hundred, I think.

Cross-examination by Mr. DENISON:

Q. After the promulgation of Circular 58 (Defendant's Exhibit D) was any change made by the steamship companies, or any of them, in their practice with reference to submitting evidence on the questions involved?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial, upon the ground that whatever the companies may have done pertaining to such notices has nothing to do with the legality of the exaction which had theretofore been made; that in any event the practice of submitting evidence within fourteen days did not afford the plaintiff a reasonable opportunity to be heard.

Objection overruled; exception.

A. Absolutely none, so far as my knowledge goes.

Q. So far as you know, was any evidence ever submitted by any steamship company?

Same objection; same ruling; exception.

A. Never have known of any evidence being submitted, either before or after the promulgation of Circular 58. There never was any request made through the Collector's office, so far as I know, for an

tension of the fourteen days' limit in the notices sent after the is-
ance of Circular 58.

Q. When deposits were made by the steamship companies, pursu-
t to the notice sent out under Circular 58 (a sample of which
tice is in evidence as Plaintiff's Exhibit 4) what disposition was
de by the Collector of that money?

Same objection; same ruling; exception.

A. It was held for the fourteen days allowed by that notice, sub-
ject to any further order of the Secretary of Commerce and
1 Labor. It was held in a special fund, by an official of the
Custom House, until the expiration of the fourteen days, and
en, no further directions being received, it was passed to the credit
"Fines, penalties and forfeitures." The covering of the amount of
deposit in the treasury would be made upon and after the re-
ipt of a letter such as Defendant's Exhibit G VIII in every case.
he money was then covered in a special account of "Fines, penal-
s and forfeitures." Prior to that time, it was held in a special
ount as a deposit. In case the Secretary of the Treasury did not
ally impose the penalty, the amount deposited would be returned
the depositors.

Q. I note in Plaintiff's Exhibit 4 that it is required as a condition
clearance that the deposit be made within 24 hours after the re-
pt of the notice in the form of that exhibit.—Will you state
ether or not in practice that limitation was strictly enforced?

Same objection; same ruling; exception.

A. It was not strictly enforced; under certain circumstances the
ne was extended, sometimes to 48, and I think even to 60 hours.

By Mr. BEERS:

Q. Mr. Hamilton, you have testified that under the terms of Cir-
lar 58, various sums, which you call "deposits," were made with
e Collector of the Port;—were any of these sums ever repaid to the
amship lines which made payments?

A. Never.

By Mr. DENISON:

Q. So far as you know, was any effort made by any of the steam-
ip lines to meet the *prima facie* case referred to in the notices pur-
ant to which these deposits were made?

2 Mr. BEERS: Objected to as immaterial, irrelevant and in-
competent, on the ground that the notice did not afford the
amship companies a reasonable opportunity to be heard, and
reatens to deprive them of their property without due process of
w, contrary to the provisions of the Fifth Amendment to the
deral Constitution.

Objection overruled; exception.

A. Never heard of such a case.

By Mr. BEERS:

I do know that a series of threats were made by the steamship

companies, to recover the amounts exacted under Section 9 of the Immigration Act, on the ground of the alleged illegality of the exaction.

Counsel for both parties submitted the following agreed statement of facts with reference to the alien involved in the action of the International Mercantile Marine Company *v.* Stranahan, No. 3:

1. That at or about its date, the following letter was sent by the Commissioner of Immigration to the American Line, as addressed, and was received by the plaintiff, the owner of the said Line.

This letter is marked "Plaintiff's Exhibit VI." and is as follows:

"*Notice of Liability on Account of Bringing Diseased Alien to the United States.*

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.)

OFFICE OF COMMISSIONER OF IMMIGRATION,
PORT OF NEW YORK, *August* 8, 1905.

To American Line, Owners of the Steamship "New York", August 6, 1905, 9 Broadway, New York City:

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the ex-
163 amining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the Collector of Customs at this port, within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship.	Disease.
Hage Elias Faris	"New York"	Trachoma.

(Signed) ROBERT WATCHORN,
Commissioner.

SMR.

Received the above notice Aug. 8, 1905, at 1.10 P. M.
(Time)

AMERICAN LINE.
Per F. BOWERS.

Witness:
SAMUEL YOUNG.

2. That this letter was the first and only notice to the effect that a payment was demanded in the case of the alien to whom it refers

3. That the sum of $100, demanded in this letter, (Plaintiff's Exhibit 6) was paid by International Mercantile Marine Company on August 9, 1905.

4. That such payment was not made voluntarily but for the purpose of obtaining clearance of the ship and thereby avoiding the serious derangement of the plaintiff's business and the heavy financial loss which would result from the failure of the ship to obtain clearance.

164 5. That coincident with the said payment which was made to the Collector of Customs of the Port of New York there was filed with the said Collector a letter, marked Plaintiff's Exhibit 7, of which the following is a copy:

AUGUST 8, 1905.

"Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $200, imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States Wordy Toome and Hage Elias Faris, passengers on the Steamship 'New York;" arriving Aug. 6th, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly

AMERICAN LINE,
INTERNATIONAL MERCANTILE
MARINE CO."

6. That a notice, similar in form to defendant's Exhibit K, was issued by the surgeon in charge, at the Port of New York of the Immigration Service, in the case of the alien referred to in said Plaintiff's Exhibit 6, and that the said notice was forwarded to the plaintiff and received by it, on or about the date of the arrival of the said alien. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of such notice.

7. That the papers marked "Defendant's Exhibit L 1-6" and hereinafter transcribed into this record, are received without objection by reason of the fact that no one has been called to prove the execution thereof, or the fact that they were sent in the course of official business. Those facts being admitted, but otherwise with reservation to the plaintiff of all objections in respect to relevancy, materiality and competency, these papers are as follows:

165 THE DEFENDANT'S EXHIBIT L–1.

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *August* 9, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y.

SIR: Referring to notices of liability for fines under Section 9 Act of March 3, 1903, I have to advise you that the Compagnie Gen-

erale Transatlantique deposited with this office to-day the sum of one hundred dollars in the case of the alien passenger Meyer Halpern, who arrived on the S. S. "La Gascogne." Also that the agents of the S. S. "New York" deposited to-day the sum of two hundred dollars for the alien passengers Hage Elias Faris and Wordy Toome.

The fine of one hundred dollars in the case of the steamship "Bulgaria," alien passenger Moritz Lichtenthal has not yet been deposited.

Respectfully,
(Signed) N. N. STRANAHAN, *Collector.*

Copy.

THE DEFENDANT'S EXHIBIT L–II.

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *August* 23, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to enclose for your consideration, a certificate dated August 17, 1905, by the P. H. & M. H. Surgeon-in-Charge here to the effect that Faris Hage Elias, ex S. S. "New York," American Line, August 6, 1905, has trachoma, a dangerous,
166 contagious disease; that said alien was afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time. I also enclose a duplicate notice served on the Line at 1.10 P. M., August 8, 1905, in accordance with Department Circular No. 58.

The required deposit having been made with the Collector, a period of 14 days was allowed the Line within which to file evidence and show cause why a fine should not be imposed. No evidence or other statement having since been received from the Line, I recommend that a fine of $100. be imposed in accordance with section 9 of the Act of March 3, 1903.

Respectfully,

——— ———,
Commissioner.

SMR.
Incl. 10900.

THE DEFENDANT'S EXHIBIT L–III. (Enclosed in DEFENDANT'S EXHIBIT L–II.)

Treasury Department.

Public Health and Marine Hospital Service.

Form 8949.

Medical Certificate.

PORT OF NEW YORK, *August* 7, 1905.

Name, Faris Hage Elias.
Age, 39 Native of Turkey Race Syr.
S. S. "New York."
Arrived August 6, 1905.

This is to certify that the above-described immigrant has Trachoma which is a dangerous contagious disease. Said alien was afflicted with such disease at the time of foreign embarkation and its existence might have been detected by means of a competent medical examination at such time.

(Sgd.) GEO. W. STORER,
Surgeon, P. H. and M. H. S., in Charge.

167 To the Commissioner of Immigration.
Immigration Hosp'l.

Copy.

THE DEFENDANT'S EXHIBIT L–IV.

No. 48969.

Department of Commerce and Labor, Office of the Secretary, Washington.

AUGUST 24, 1905.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: The Department has received, under cover of your letter dated August 23, 1905, No. 19,636 the record in relation to the alien Faris Hage Elias, ex S. S. "New York," August 6, 1905.

As a result of the evidence presented and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above-mentioned alien was, at the time of foreign embarkation, afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected at that time by means of a competent medical examination.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which port said vessel arrived, the sum of $100, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Col-

lector in order that the amount now held by him as a special deposit on account of said diseased alien, may immediately be covered into the Treasury as an immigration fine.

Respectfully, LAWRENCE O. MURRAY,
Assistant Secretary.

FJP. TRS.

168 THE DEFENDANT'S EXHIBIT L-V.

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *August* 25, 1905.

American Line, 9 Broadway, New York City.

GENTLEMEN: After careful consideration of all the facts relating to the alien Faris Hage Elias, who arrived on the steamship "New York" August 6, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100 has been assessed, and the Collector of the Port has been so informed. This action has been taken in conformity with Section 9 of the Act approved March 3, 1903. This notice is sent for your information.

Respectfully,
——— ———,
Commissioner.

CF.

8. That on or after August 25, 1905, the defendant paid over into the Treasury of the United States the money paid by the plaintiff pursuant to plaintiff's Exhibit 6 and referred to in the Twentieth cause of action of the International Mercantile Marine Company's Action No. 3. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of the fact.

9. That prior to the said payment over into the Treasury, the said sum was held by an official of the Custom House, in a special fund, as a deposit, to be returned to the plaintiff, in case the penalty was finally not imposed. This admission is made by the plain-
169 tiffs without admitting the materially, relevancy or competency of the fact.

Mr. BEERS: Under my reservation made in Paragraph 7, I object to the admission of the papers marked defendant's exhibits L-1, L-2, L-3, L-4 and L-5, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff, or the right to demand a deposit from the plaintiff. They show on their face that the plaintiff has had no opportunity to be heard, and no notice of intention to impose a fine before its property was demanded and taken. These proceedings cannot support the taking of plaintiff's property and the

imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by Court and Jury under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively Defendant's Exhibits L-I, L-II, L-III, L-IV, L-V and L-VI.

Mr. STIMSON: The Defendant admits that the payment of $100, in each case referred to in the foregoing testimony by the plaintiff to the Collector of the Port of New York was made by the plaintiff involuntarily and under protest.

It is also admitted that the usual period of mail communication between the Port of Southampton, Liverpool and Antwerp, Europe and the Port of New York, is seven days each way.

170 The Court then took the above cause under consideration, and on June 16, 1908, made special Findings of Fact and Rulings upon Questions of Law, which are in the record herein.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find submitted by the defendant numbered "Sixth", as made by the Court, in so far as the Court found that a representative of the plaintiff inspected the records of the Hospital and Special Inquiry Board at Ellis Island, upon the ground that such finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find submitted by the defendant numbered "Seventh", as made by the Court, in so far as the Court found that the plaintiff knew or might have ascertained that penalties under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect to the aliens named in the complaint, upon the ground that such Finding was without support in the evidence, which exception was duly allowed by the Court.

The Plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find, submitted by the defendant, numbered "Eleventh", as made by the Court, in so far as the Court found that the facts in the letter therein set forth did, as a matter of fact, appear to the satisfaction of the Secretary of the Department of Commerce and Labor, upon the ground that said Finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find, submitted by the defendant, numbered "Twenty-ninth", as made by the Court, in so far as the Court found that the facts in the letter therein set forth did, as a matter

171 of fact, appear to the satisfaction of the Secretary of the Department of Commerce and Labor, upon the ground that said Finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, asked the Court to find each of the Twenty-three Conclusions of Law so submitted by the plaintiff, and for judgment for the plaintiff for the full amount demanded in the complaint. The plaintiff's motions and requests, each and all, were denied by the Court, and to each and all of the rulings of the Court thereon the plaintiff, by its counsel, duly excepted, which exceptions were duly allowed by the Court.

The defendant then, by his counsel, asked the Court to find five Conclusions of Law submitted by him and that the plaintiff was not entitled to recover from the defendant. The Court thereupon granted such requests and did so find each of the said five Conclusions of Law, to each of which rulings the plaintiff, by its counsel, duly excepted, which exceptions were allowed by the Court, and the Court directed that the complaint of the plaintiff be dismissed, to which rulings the plaintiff, by its counsel, duly excepted, which exception was allowed by the Court.

The Court thereupon made a decision and order appearing in the record herein, based upon such Findings of Fact and Conclusions of Law so found by him, to which, and every part of which, in so far as it failed to direct judgment for the plaintiff, and in so far as it directed judgment dismissing the complaint, and in so far as it failed to direct judgment as requested by the plaintiff, the plaintiff, by its counsel, duly excepted, which exceptions were duly allowed by the Court.

Judgment was entered on said decision and order on June 26, 1908.

And now, in furtherance of justice and that right may
172 be done, the plaintiff presents the foregoing as the bill of his exceptions in this case and prays that the same may be settled and allowed and signed and certified by the Judge, as provided by law.

Dated June 26, 1908.

LORD, DAY & LORD,
Attorneys for Plaintiff.

Inasmuch as the matters produced and offered in evidence on said trial and the said exceptions so made to the rulings and decisions of the said judgment do not appear on the record of the said cause in the Circuit Court of the United States for the Southern District of New York, the plaintiff has prepared and caused to be settled this bill of exceptions and so much thereof as appears herein as the record thereof in accordance with the statute in such case made and provided, the Court hereby signs and orders this bill of exceptions to be filed.

Dated, June 26, 1908.

C. M. HOUGH,
United States Judge.

We consent to the above settlement and signing of the foregoing bill of exceptions.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, So. District of New York.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 1.—Bill of Exceptions.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

173 Circuit Court of the United States, Southern District of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Assignment of Errors.

Plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred upon trial of the cause, to wit:

1. The Court erred in the admission of the evidence of Samuel S. Cortes given by deposition, which, in substance, related to the presence and duties of landing agents at Ellis Island.

2. The Court erred in the admission in evidence of the paper marked "Defendant's Exhibit A," being a Government Surgeon's Notice that an alien had been placed in the hospital at Ellis Island.

3. The Court erred in admitting the evidence of the said Samuel S. Cortes in relation to the custom of sending notices similar to defendant's Exhibit A.

174 4. The Court erred in the admission of evidence of the witness Samuel S. Cortes relating in substance to the practice of the plaintiff with reference to dealing with aliens at Ellis Island and with reference to the attitude towards the practice of the Government in reference to fines under Section 9 of the Immigration Act of 1903.

5. The Court erred in the admission of the evidence of the witness Samuel S. Cortes with reference to the practice of the plaintiff with reference to aliens who were the subject of the notices similar to defendant's Exhibit A.

6. The Court erred in the admission of the evidence of the defendant's witness Robert S. Crater, which, in substance, related to the checking of the names of the steerage passengers at Ellis Island in 1903, and the fact that the data of the Medical Division at Ellis Island was open to inspection by the steamship companies.

7. The Court erred in admitting the evidence of the defendant's witness William F. McDowell, which, in substance, related to the course of procedure, by which an alien at Ellis Island came into the Medical Division.

8. The Court erred in admitting the evidence of the defendant's witness, William F. McDowell, to the effect in substance that the re-

ports of the Ellis Island Hospital were accessible to representatives of the steamship companies.

175 9. The Court erred in receiving in evidence the paper marked "Defendant's Exhibit B", being Government Surgeon's notice that the alien Necchi had been sent to the hospital at Ellis Island.

10. The Court erred in receiving in evidence the paper marked "Defendant's Exhibit C," being Government Surgeon's notice that the alien Van Geetson had been sent to the hospital at Ellis Island.

11. The Court erred in admitting the evidence of the defendant's witness, Byron H. Uhl, with reference to the right to examine records and documents, at Ellis Island and the accessibility of the reports, records and documents in reference to arriving aliens, to representatives of the steamship companies.

12. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit D," being Circular No. 58 of the Department of Commerce and Labor.

13. The Court erred in admitting in evidence the letter marked "Defendant's Exhibit E", being a letter addressed to the United States Attorney at New York by Commissioner General Sargent.

14. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F I," being a letter from Acting Commissioner Sargent at New York to the Commissioner-General at Washington enclosing Doctor's certificate in the case of the alien, Van Geetson.

176 15. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F II," being a letter from the Secretary of the Department of Commerce and Labor to the Commissioner at Ellis Island, directing the payment of $100, by the Red Star Line in the case of the alien, Van Geetson.

16. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F III," being a letter from Acting Commissioner Murray to the Collector of the Port of New York certifying a fine of $100 for collection in case of the alien Van Geetson.

17. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G I," being a notice of liability for fine on account of bringing diseased alien to United States sent by Commissioner to American Line in the case of the alien, Nassif.

18. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G II," being a verification of landing signed by the chief of the statistical division in the case of the alien, Nassif.

19. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G III," being a letter from a deputy collector to the Commissioner of Immigration at Ellis Island stating that on July 6, 1905, the fines had not been paid in the case of the alien, Nassif.

20. The Court erred in admitting in evidence the paper
177 marked "Defendant's Exhibit G IV," being a letter from the Commissioner at New York to the Commissioner General at Washington, recommending a fine of $100, in the case of the alien, Nassif.

21. The Court erred in admitting in evidence the paper marked

"Defendant's Exhibit G V," being a letter from the defendant to the Commissioner stating that the deposit of $100. in the case of the alien Nassif had been made late.

22. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G VI," being a letter from the Commissioner at New York to the Commissioner General stating that the deposit of $100. in the case of the alien Nassif had been made late.

23. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G VII," being a letter from an assistant Secretary of Commerce and Labor to the Commissioner of Ellis Island imposing fine of $100. in the case of the alien, Nassif.

24. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G VIII," being a letter from the Commissioner at New York to the Collector of the Port certifying a fine of $100. for collection in the case of the alien, Nassif.

25. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G IX," being a notice of the imposition
178 of a fine of $100, sent by the Commissioner at New York to the American Line in the case of the alien, Nassif.

26. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H I," being a letter from a Commissioner at New York to the Commissioner General recommending a fine of $100. in the case of the alien, Klaara.

27. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H II," being a letter from the Commissioner at New York to the Collector of the Port certifying a fine of $100. for collection in the case of the alien, Klaara.

28. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H III," being a letter from the Secretary of Commerce and Labor to the Commissioner at Ellis Island directing the imposition and collection of a fine of $100. in the case of the alien, Klaara.

29. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I I," being a letter from a Commissioner at New York to the Commissioner General submitting medical certificate in the case of the alien, Necchi.

30. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I II," being a letter from the Secretary
179 of Commerce and Labor to the Commissioner at Ellis I-land directing the imposition and collection of a fine of $100. in the case of the alien, Necchi.

31. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I III," being a letter from a Commissioner at New York to the Collector of the Port certifying a fine of $100. for collection in the case of the alien, Necchi.

32. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the subject of asking for a hearing and submitting evidence after the receipt of the paper marked "Plaintiff's Exhibit 4."

33. The Court erred in admitting the evidence of the plaintiff's

witness Arthur Lederer with reference to the hospital expenses of immigrants at Ellis Island.

34. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the receipt of reports similar in form to the Defendant's Exhibit C.

35. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit K," being a Government surgeon's notice that the alien, Nassif, had been sent to the hospital.

36. The Court erred in admitting in evidence the facts in the admission of plaintiff with reference to notices similar to defendant's Exhibit K and their being sent in the case of the alien, Johann Klaara.

180 37. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the attitude of the steamship companies in submitting evidence in case of aliens where a payment was demanded.

38. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the depositing of the moneys paid by the steamship companies pursuant to the demands of the Collector of the Port.

39. The Court erred in admission of the evidence of the plaintiff's witness Francis E. Hamilton with reference to the enforcement of the "twenty-four hour" provision contained in Plaintiff's Exhibit 4.

40. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the efforts made by the steamship lines to meet the *prima facie* case referred to in notices pursuant to which deposits were made.

41. The Court erred in admitting in evidence the admission of the plaintiff with reference to a notice similar to defendant's Exhibit K being sent in the case of the alien Hage Elias Faris.

42. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L I," being a letter from the defendant to the Commissioner at Ellis Island stating that a deposit of $100.

181 had been received in the case of the alien, Faris.

43. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L II," being a letter from a Commissioner at New York to the Commissioner General recommending a fine of $100. in the case of the alien, Faris.

44. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L III," being a medical certificate of the existence of trachoma in the case of the alien, Faris.

45. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L IV," being a letter from an assistant Secretary of Commerce and Labor to the Commissioner at Ellis Island directing a fine of $100. in the case of the alien, Faris.

46. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L V," being a letter from a Commissioner at New York to the American Line, stating that a fine of $100. had been imposed in the case of the alien, Faris.

47. The Court erred in admitting in evidence the admission of the plaintiff obtained in Paragraph 8 of the Statement of Facts with

reference to the alien Hage Elias Faris to the effect that the money paid by the plaintiff to the defendant had been paid by the latter into the United States Treasury.

48. The Court erred in admitting in evidence the admission of the plaintiff in Paragraph 9 of the Statement of Facts with reference to the alien Hage Elias Faris to the effect that the sum paid by the plaintiff to the defendant was held as a deposit.

182 49. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "First," that the imposition of the said fine upon the plaintiff in the case of the alien Alfons Van Geetson was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

50. The Court erred in refusing to rule as requested in the Conclusions of Law submitted by the plaintiff numbered "Second," that the imposition of the said fine upon the plaintiff in the case of the alien Alfons Van Geetson was in violation of the right of the plaintiff to a trial by jury in a criminal prosecution under subdivision 3 of Section 2 of Article III of the Constitution of the United States.

51. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Third," that the imposition of the said fine upon the plaintiff in the case of the alien Alfons Van Geetson was in violation of the right of the plaintiff under the Sixth Amendment of the Constitution of the United States to a speed and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

52. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered

183 "Fourth," that the exaction of the sum of $100. from the plaintiff in the case of the alien Alfons Van Geetson deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

53. The Court erred in refusing to rule as requested in the Conclusion of law submitted by the plaintiff numbered "Fifth", that the provisions of the Immigration Act of March 3, 1903 did not authorize the Secretary of the Department of Commerce and Labor to adopt the procedure for the collection of fines for offenses against the provisions of Section 9 of said Act, set forth in Department Circular No. 58, issued by said secretary on or about January 25, 1905.

54. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Sixth", that the provisions of the Immigration Act of March 3, 1903, did not authorize the exaction of $100. from the plaintiff in the case of the alien Dolly G. Nassif before any fine had been imposed upon the plaintiff.

55. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Seventh", that the provisions of the Immigration Act of March 3, 1903, did not authorize the withholding of clearance to plaintiff's steamship at

New York in the case of the alien Dolly G. Nassif before any fine had been imposed in that case.

184 56. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eighth", that the exaction of $100 from the plaintiff, in the case of the alien Dolly G. Nassif, deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

57. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Ninth", that the imposition of the said fine upon the plaintiff, in the case of the alien Dolly G. Nassif, was in violation of the right of the plaintiff to have its liability to such fine established by judicial trial under Section 1 of Article III of the Constitution of the United States.

58. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Tenth", that the imposition of the said fine upon the plaintiff, in the case of the alien Dolly G. Nassif, was in violation of the plaintiff's right under the third subdivision of Section 2 of Article III of the Constitution of the United States to a trial by jury in a criminal prosecution.

185 59. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eleventh", that the imposition of the fine upon the plaintiff, in the case of the alien Dolly G. Nassif, was in violation of the right of the plaintiff under the Sixth Amendment to the Constitution of the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted by the witnesses against it and otherwise as stated in said amendment.

60. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Twelfth", that the imposition of the fine upon the plaintiff in the case of the alien Dolly G. Nassif deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

61. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Thirteenth", that Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the liability to such fine or penalty.

186 62. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fourteenth," that Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the guilt of the accused.

63. The Court erred in refusing to rule as request in the Conclusion of Law submitted by the plaintiff numbered "Fifteenth," that Congress has no power under the Constitution of the United

State to provide for the taking of the property of any person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such person and without a reasonable opportunity for such person to be heard.

64. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Sixteenth," that under Section 9 of the Immigration Act of March 3, 1903, clearance cannot be refused unless a fine has been legally imposed for an offense against the provisions of said Act.

65. The Court erred in refusing to rule as requested in the
187 Conclusion of Law submitted by the plaintiff numbered "Seventeenth, that Congress has no power to authorize the Secretary of the Department of Commerce and Labor or any other executive officer of the United States Government to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

66. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eighteenth," that Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

67. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Nineteenth," that Congress has no power under the Constitution of the United States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of March 3, 1903, in advance of a trial or hearing to establish the liability for such fine.

68. The Court erred in refusing to rule as requested in the
188 Conclusion of Law submitted by the plaintiff numbered "Twentieth," that Congress has no power under the Constitution of the United States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of March 3, 1903, in advance of a trial or hearing to establish the guilt of the accused.

69. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Twenty-first," that the provisions of the Act of March 3, 1903, did not authorize the adoption by the Secretary of the Department of Commerce and Labor of the regulations and procedure set forth in Circular 58 as a method for the imposition and collection of a fine for an offense against the provisions of Section 9 of said act.

70. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Twenty-second," that the plaintiff is entitled to judgment for the recovery

of the sum of $100. paid to the defendant in the case of the alien Alfons Van Geetson, with interest from the date of such payment.

71. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Twenty-third," that the plaintiff is entitled to judgment for the recovery of
189 the sum of $100. paid to the defendant in the case of the alien Dolly G. Nassif, with interest from the date of such payment.

72. The Court erred in refusing to direct judgment for the plaintiff.

73. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "I," that the collections of the said sums of One hundred dollars ($100.) respectively, under the circumstances set forth in the Findings, from the plaintiff by the defendant, were authorized by Section 9 of the Act of Congress approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States."

74. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "II," that the said section of the said Act is constitutional.

75. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "III," that the said several sums of One hundred dollars ($100.) were constitutionally collected.

76. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "IV," that the payments of the said several sums of One hundred ($100.) dollars were lawful conditions imposed upon the privilege of clearance.

77. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "V," that the defendant
190 is entitled to judgment dismissing the complaint on the merits with costs.

78. The Court erred in directing judgment for the defendant and in directing the dismissal of the complaint of the plaintiff and in refusing to find the Conclusions of Law in favor of the plaintiff.

79. The Court erred in making the Finding of Fact numbered "Sixth" of the Requests to Find submitted by the defendant with reference to acts of representatives of the plaintiff at Ellis Island.

80. The Court erred in making the Finding of Fact numbered "Seventh" of the Requests to Find submitted by the defendant with reference to the knowledge of the plaintiff as to the probable imposition of fines.

81. The Court erred in making the Finding of Fact numbered "Eleventh" of the Requests to Find submitted by the defendant with reference to certain facts appearing to the satisfaction of the Secretary of the Department of Commerce and Labor.

82. The Court erred in making the Finding of Fact numbered "Twenty-ninth" of the Requests to Find submitted by the defendant with reference to certain facts appearing to the satisfaction of the Secretary of the Department of Commerce and Labor.

And the plaintiff aforesaid prays that the judgment of the Circuit

Court may be in all respects reversed, and that the said Circuit Court be directed to render judgment in the above entitled cause
191 for the plaintiff for the full amount demanded by the complaint.

Dated June 26, 1908.

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, So. District of New York—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 1. Assignment of Errors.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y. Filed Jun- 26, 1908. John A. Shields, Clerk.

192 United States Circuit Court, Southern District of New York.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

Know all men by these presents:

That we, International Mercantile Marine Company, as principal, and the Fidelity and Deposit Company of Maryland, having an office and principal place of business for the State of New York at No. 2 Rector Street, in the Borough of Manhattan, in the City of New York, as surety, are held and firmly bound unto Nevada N. Stranahan in the full and just sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said Nevada N. Stranahan, or his certain attorneys, executors administrators or assigns; to which payment, well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our corporate seals. Dated the twenty-fifth day of June, Nineteen hundred and eight.

Whereas, Lately at a Circuit Court of the United States in a suit pending in said Court between International Mercantile Marine Company, plaintiff, and Nevada N. Stranahan, defendant, Action No. 1, a judgment was rendered against the said International Mercantile Marine Company and the said International Mercantile Marine Company having obtained a writ of error and filed a copy thereof in the Clerk's office of said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Nevada N. Stranahan citing and admonishing him to be and appear at a session of
193 the supreme Court of the United States to be holden at the City of Washington on the — day of ——, 1908, next.

Now, the condition of the above obligation is such, that if the said International Mercantile Marine Company shall prosecute the said writ of error to effect and answer all damages and costs if it fails to

make its plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

INTERNATIONAL MERCANTILE MARINE COMPANY,

By —— ——.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

By HUGH M. ALLWOOD, *Attorney-in-Fact.*

Attest:

[SEAL.] JAMES R. KINGSLEY, *Attorney.*

Approved by:

——— ———,

United States District Judge, Acting Circuit Judge.

STATE OF NEW YORK,
County of ——, ss:

On this — day of ——, 190-, before me personally came ——— ———, to me known, who, being by me duly sworn did depose and say that he resided in ——, that he is the —— of the Corporation described in and which executed the above instrument, that he knew the seal of said Corporation; that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the Board of —— of said Corporation and that he signed his name thereto by like order.

194 STATE OF NEW YORK,
County of New York, ss:

On the 25th day of June, in the year 1908, before me personally came Hugh M. Allwood, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 3, of Chapter 720 of the Session Laws of the State of New York, for the year 1893. And the said Hugh M. Allwood further said that he is acquainted with James R. Kingsley, and knew him to be the Attorney of said Company; that the signature of the said James R. Kingsley, subscribed to the within instrument, was in the genuine handwriting of the said James R. Kingsley, and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said Hugh M. Allwood.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the Company in the City of Baltimore, State of Maryland, on the seventh day of February, A. D., 1906, on motion, it was unanimously

"*Resolved*, That Henry B. Platt, Vice-President, or James R. " Kingsley, Attorney, or Frank H. Platt, Edward T. Platt, Joseph A. " Flynn, and Hugh M. Allwood, Attorneys-in-Fact of this Company, " in the State of New York, be, and each of them is, hereby author- " ized and empowered to execute and deliver any and all bonds or " undertakings for or on behalf of this Company, in its business of " guaranteeing the fidelity of persons holding places of public or pri- " vate trust and the performance of contracts other than insurance " policies, and executing or guaranteeing bonds and other undertak- " ings required or permitted in all actions or proceedings or by law " required, and to attach thereto the seal of the Company, the same to " be attested by the said James R. Kingsley, Attorney of the Com- " pany, or by either one of the other persons above named, as occasion " may require."

COUNTY OF NEW YORK, *ss*:

I, James R. Kingsley, Attorney, of the Fidelity and Deposit Company of Maryland, has compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original Resolution. Given under my hand and the seal of the Company, at the City of New York, this 28th day of June, 1908.

[SEAL.] JAMES R. KINGSLEY,
Attorney.

Fidelity and Deposit Company of Maryland.

Statement, March 31, 1908.

Resources.		Liabilities.	
Real Estate	$757,000 00	Capital Stock	$2,000,000 00
Stocks and Municipal Bonds	2,842,990 00	Surplus	2,421,185 45
U. S. Government, Railroad and other Bonds	1,467,750 00	Premium Reserve	799,509 62
British Consols	222,750 00	Reserve for Taxes (Accrued)	13,774 46
Net Premiums Due	218,638 81	Reserve for Contingent Claims	492,718 60
Cash in Bank, etc	191,879 11	Reserve for Claims Adjusted (Checks out)	2,764 09
Plant, Equipment and Material, Contract at Amsterdam, N. Y.	28,944 30		
Total	$5,729,952 22	Total	$5,729,952 22

STATE OF NEW YORK,
County of New York, ss:

James R. Kingsley, being duly sworn, says that he is the Attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said Company, as of March 31st, 1908, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 28" day of June, 1908.
[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

195 (Endorsed:) U. S. Circuit Court, Southern District of N. Y.—International Mercantile Marine Company, Plaintiff, *vs.* Nevada N. Stranahan, Defendant, Action No. 1—Bond.—I approve of the within Bond and of the sufficiency of the Surety therein. Dated June 26, 1908. John A. Shields, Clerk.

196 THE UNITED STATES OF AMERICA, *ss:*

To Nevada N. Stranahan, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington, on the 24 day of July 1908 next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein the International Mercantile Marine Company is plaintiff in error, and you are defendant in error, Action No. 1, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice done to the parties in that behalf.

Given under my hand at the City of New York, in the circuit and district above named this 26 day of June, in the year of our Lord, one thousand nine hundred and eight.

C. M. HOUGH,
District Judge of the United States for the Southern District of New York, Acting Circuit Judge.

197 [Endorsed:] E. & A. C. 2780. U. S. Circuit Court, So. District of New York. International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant. No. 1. Citation. Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York. Service admitted. Henry L. Stimson, U. S. Att'y. Jun- 26/08. U. S. Circuit Court, Southern District N. Y. Filed Jun- 26, 1908. John A. Shields, Clerk.

198 [Endorsed:] United States Supreme Court. International Mercantile Marine Co., Pl'ff in Error, *vs.* Nevada N. Stranahan, Def't in Error. Action No. 1.

Endorsed on cover: File No. 21,306. S. New York C. C. U. S. Term No. 510. International Marcantile Marine Company, Plaintiff in Error, *vs.* Nevada N. Stranahan. Filed August 15th, 1908. File No. 21,306.

199 Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of New York.

October Term, No. 510.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the Clerk of the United States Supreme Court be and hereby is authorized and requested to correct the record herein so that the ruling now appearing at the close of the Findings of Fact submitted by the defendant, "All found. C. M. H.", shall appear opposite or underneath the words "Conclusions of Law" (page 32) and so that the ruling now appearing at the close of the Findings of Fact submitted by the plaintiff, "All refused. C. M. H.", shall appear opposite or underneath the words "Conclusions of Law", (page 42) and that said changes be made by the insertion of a slip or otherwise in the discretion of the Clerk of the Supreme Court; and it is further

Stipulated and agreed that such changes be made *nunc pro tunc* as the date of the filing of the record herein, namely, August 15, 1908.

LUCIUS H. BEERS,
Per D. E. P.,
WM. G. CHOATE,
Counsel for Plaintiff in Error.
H. M. HOYT,
Solicitor General,
Counsel for Defendant in Error.

200 [Endorsed:] File No. 21,306. Supreme Court U. S. October Term, 1908. Term No. 510. International Mercantile Marine Co., Pl'ff in Error, *vs.* Nevada N. Stranahan. Stipulation to correct record. Filed Dec. 2d, 1908.

201 142,086.

510—21306.

Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of New York.

October Term, No. 510.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the Clerk of the United States Supreme Court be and hereby is authorized and requested to add to the printed record herein a slip containing the opinion of Hon. Charles M. Hough, rendered herein, a certified copy of which is annexed hereto, and it is further

Stipulated and agreed that such opinion be deemed to be and be in all respects a part of the record herein certified by the Clerk of the Circuit Court for the Southern District of New York.

LUCIUS H. BEERS,
Per D. E. P.,
WM. G. CHOATE,
Counsel for Plaintiff in Error.
H. M. HOYT,
Solicitor General,
Counsel for Defendant in Error.

202 [Endorsed:] Supreme Court of U. S. In error to the Circuit Ct. of U. S., Southern District of N. Y. International M. M. Co., Pl'ff in Error, against Nevada N. Stranahan, Def't in Error, October Term, No. 510. Stipulation.

203 Circuit Court of the United States, Southern District of New York.

Action No. 1.
Action No. 3.

INTERNATIONAL MERCANTILE MARINE CO.
vs.
NEVADA N. STRANAHAN.

Action No. 1.

OCEANIC STEAM NAVIGATION CO.
vs.
NEVADA N. STRANAHAN.

Statement by the Court.

The plaintiffs in these suits are steamship owners in the North Atlantic trade: the International Mercantile Marine Co. operating the "American" and "Red Star" lines, and the Oceanic Steam Navigation Co. the "White Star" line. Defendant is the Collector of Customs at this port.

The actions are brought to recover, as illegally exacted, various sums of $100 each, paid defendant as a condition of procuring clearance for certain of plaintiffs' ships.

Defendant's justification for such exaction is Sec. 9 of the Immigration Act of 1903, declaring it "unlawful for any person
204 including any transportation company * * * to bring into the United States any alien afflicted with a loathsome or with a dangerous contagious disease," and further prescribing that "if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien so brought * * * was afflicted with such disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such * * * transportation company * * * shall pay to the Collector of Customs * * * $100 for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such *fine* imposed upon *it* remains unpaid."

Plaintiff transportation Companies did bring to this country aliens afflicted with the proscribed diseases; it did appear to the satisfaction of the Secretary that the aliens were so afflicted when plaintiffs embarked them, and that their condition might have been detected by competent medical examination. Neither here, nor before any departmental officer, have plaintiffs disputed these facts: it being the essence of their demand that the existence of disease and the absence of proper inspection therefor, are alike immaterial, inasmuch as either the statute under which defendant acted, or the procedure under it, or both, are unconstitutional, and therefore ineffectual to prevent recovery of moneys exacted by defendant under the obvious

compulsion of stopping the voyage of a ship worth millions, until a paltry hundred was forthcoming.

The practice under Sec. 9 has not at all times been the same. Before January 25th, 1905, the procedure (in New York at all events) was to examine the immigrants and decide whether
205 any were obnoxious to the section; after which a notice was sent to the ship owner, informing him in substance that he would pay a fine of $100 per diseased immigrant, before his ship could clear; and this writing was the first communication of any sort given by the Department to the carrier on the subject.

After the date mentioned, written notice was first given the ship owner that diseased aliens had been discovered on a given ship and that the Secretary was satisfied that their condition could and should have been ascertained at the time and by the examination mentioned in Sec. 9; wherefore fourteen days were given wherein the persons notified might show cause why their ship should not be fined, and in the meantime clearance was granted only on deposit of $100 as security for the payment of each fine that might be ultimately imposed. This change in practice was wrought by Circular 58, and some of the money now sued for was exacted before the circular, and some after.

So far as the evidence herein discloses, Circular 58 made no difference at all to these plaintiffs. Before the Circular date they unofficially knew as soon as inspection of immigrants — completed, how many fines they would be required to pay for any given ship; getting such information from their own representatives whose business took them regularly to Ellis Island; and after the Circular they had the same means of knowledge, plus a notice which told them nothing new, if their Ellis Island men were alert. But whether information of trouble came in one way or another, plaintiffs' course was the same, *i. e.,* to do nothing—so far as denying the Department's allegations was concerned.

206 These are, I believe, the facts shown by the evidence, all objections to which have been overruled, in order that everything in which counsel have based argument may be before the Appellate Court, and not because I deem it all material or relevant. On the contrary I do not think that the information gleaned by plaintiffs, through their own men, whether before or after Circular 58, bound them at all. For legal purposes the first knowledge they had of official purpose or decision, at any time, was the official notice. Further, I consider fourteen days are unreasonably short time within which to show cause, if the shipowners were unprepared with any information regarding the physical condition of their passengers on embarkation,—which was the state of the case, and which plaintiffs' counsel assume as a reasonable and lawful position on their clients' part.

The fact is that the carriers brought in the aliens on the chance that they would not be deported, and they now assert in effect that the "rules of the game" have not been observed in punishing them for taking the chance.

The cases have been tried without a jury. Formal findings will be signed in accordance with this statement and the following opinion:

William G. Choate and Lucius H. Beers, Esqs., for Plaintiffs.
Henry L. Stimson, U. S. Attorney, and W. T. Dennison and F. Frankfurter Esqs., for Defendant.

HOUGH, *D. J.*:

To declare unconstitutional, especially in a Court of first instance, an Act of Congress, is an exercise of judicial power warranted (in cases where no great and immediate financial loss is
207 threatening) only when the unconstitutionality exists beyond a rational doubt.

The practice of which the statute under consideration is an instance, *i. e.*, using a refusal of clearance as a means of extorting settlement of governmental claims, is nearly as old as the Union (R. S., Sec. 4206) and has for twenty years past been a part of our immigration system. (Acts Feb. 23, 1887, Sec. 8, Mch. 3, 1891, Sec. 10.) I am not advised of any previous attack upon the practice. It is not asserted that the exact form of words contained in Sec. 9 of the Act of 1903, is any older than that statute, but I believe that most of the battery of argument directed against it, might with equal force have been used against other Acts of Congress for many years back; and that fact alone would strongly incline me to leave the Constitutional question for the higher Courts;—pursuing the course illustrated by Spreckels Co. *v.* McClain, 113 F. R., 244.

I do not however incline to think the Act unconstitutional. For some years I have regarded it as harshly opposed to the spirit of the Constitution, and perhaps capable of use in derogation of earlier treaty rights of citizens of friendly nations;—yet entirely within the Congressional power of regulating foreign commerce. This predisposition has rendered the more necessary, careful study of the brief of distinguished counsel for plaintiffs: after which I am still unable to assent to their conclusions.

The proposition first advanced, going to the root of the whole matter, is that Sec. 9 creates a crime, viz., bringing into the country a diseased alien whose condition might in official opinion have been discovered at the port of embarkation: and for that crime provides a sanction, viz., a fine of $100.

From this premise, flows the conclusion that by constitu-
208 tional guaranty a jury trial is secured to those alleged to have committed the crime and incurred the fine.

The premise asserted, rests wholly on the use of the word *"fine"* in the section considered. A crime is a wrong which the Government "punishes in what is called a criminal proceeding in its own name" (U. S. *v.* Lee Huen, 118 F. R., at 455), and since the punishment meted out is a "fine," and a "fine" can be collected only in a "criminal proceeding," therefore that which the statute calls unlawful, must be a crime because it entails a fine.

This is putting on one word more than it can bear. Fine and penalty are frequently used interchangeably, as in Cunard Co. *v.* Stranahan, 134 F. R., 318, and the mere use of the word fine is not conclusive as to the nature of the action at law leading up to it (1 Bish. Crim. Law, 7th Ed., 17, n.).

The ingredients of a statutory crime are as well the sanction as the prohibition. An act may be *malum in se* and yet no crime even at common law; it may be *malum prohibitum*, yet if the machinery of the criminal law,—the method of enforcement called in the Lee Huen case the "criminal proceeding" be denied,—there is no crime. There being no common law offenses against the United States, a federal statute adding to the list of offenses must at once define it, denounce it and afford the appropriate remedy. It has been somewhat loosely said that a crime is an offense punishable through indictment, yet clearly it is a vital element of a crime, legally speaking, that its punishment be reachable through indictment or information.

It would I think puzzle the astutest attorney, to draw open to conviction an indictment on this section of the act. It would be necessary to accuse a *person*, yet the "fine" is imposed on a
209 "ship," while on conviction the Court would be obliged to direct the payment of $100 *to the Collector*, a method of collection hitherto unheard of on the criminal side.

Evidently Congress did not *intend* by this statute to add to the Criminal Code and it certainly denied to any crime it inadvertently seemed to create, the only proper method of enforcement. To construe the act reasonably, therefore, the $100 "fine" must be considered a penalty, and if suable at all, recoverable in debt (U. S. *v.* Banister, 70 F. R., 44).

Irrespective, however, of the argument just considered, plaintiffs urge that all proceedings under Sec. 9 are void, as depriving them of their property without due process of law,—the exactions prior to Circular 58 having been made without notice or opportunity to defend, and those after the Circular in accordance with a procedure not warranted by the Act itself. The sum of this contention is, that whether the Statute be hopelessly vicious or not, no constitutional method of enforcing its provisions has as yet been put in practice.

If this be possibly true, the preliminary enquiry is vital,—of what right or property have the plaintiffs been deprived? This question their counsel have answered thus:

"The right which the plaintiffs are here asserting is the right of ownership of their own funds. That is a constitutional right, and plaintiffs are here claiming that that constitutional right has been infringed by the taking of their property."

This statement, I am compelled to think compounds effect and cause,—it really begs the question. Truly the plaintiffs paid money under compulsion; but they did so to get clearance, and the real grievance, the *causa causans* of the train of events was the
210 refusal of clearance. If that was lawful and constitutional, everything was right enough; so that the logical questions are, (1) Had Congress a constitutional right to refuse clearance

under the circumstances and in the manner set forth in Sec. 9; and (if such right exists) (2) Was clearance refused in accordance with the terms of the statute?

As to the second query, it is enough to say that no substantial defect has been pointed out. The procedure before Circular 58 was in literal compliance with the statute, which provides for no notice, and that since the Circular while more merciful in form is at least no more drastic in effect than that of earlier date.

The first question requires consideration of the nature of clearance. The word means to satisfy the customs harbor dues and the like and obtain from the governmental authority of the port leave to depart, and in that sense was known to the language before the establishment of our Federal government (Oxford Dict. Murray, tit. clear and clearance). In the absence of statute clearance is but the gracious permission of the Sovereign to depart from a port into which without like permission contained in an entry, there was no right to come. In the United States this sovereign power is, by the Commerce clause of the Constitution, lodged in the federal government; and the privilege of clearance is granted, regulated or withheld by statute. It may be wholly suspended by embargo, of which domestic vessel owners cannot complain; and though it afford to foreign owners a *casus belli*, they are entitled to no judicial relief. It is only if and when the same power that can altogether withhold clearance, transforms the favor thereof into a statutory right
211 that vessel owners can complain at law. Hendricks *v.* Gonzalez, 67 F. R., 351.

In the present instance the very statute of which plaintiffs complain gives them the right of clearance; on payment of the sums they seek to recover. It was within Congressional power to refuse them clearance altogether. I do not think they can complain of getting it at a price.

The foregoing considerations, if well founded dispose of the cases at bar, but another line of argument has been presented, deserving statement.

As was said in Murray's Lessee *v.* Hoboken, &c. Co., 18 How., at 284, "there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination; but which Congress may or may not bring within the cognizance of the Courts of the United States, as it may deem proper."

That the regulation of immigration is one of these matters, and that Congressional action in withdrawing it almost wholly from the judicial domain is constitutional, has been decided in a line of cases too recent and familiar to need citation. Incidental to the regulation of immigrants, and absolutely necessary to efficiency of administration, is regulation of those who make immigrants possible. The importance of such regulation cannot be exaggerated, and in a city which is at once the immigrant gateway, and dumping ground need not be dilated upon.

Section 9 of the Act of 1903, is, in my judgment, a sanitary measure, necessary both for healthy immigrants and uninfected

Americans, and as such belongs eminently to that class of summary executive proceedings, transfer of which to the judicial
212 branch would "swamp the Courts" (Sing Tuck, 194 U. S., 170), and "defeat the object sought to be attained" (Sing Lee, 54 F. R., 334).

Every consideration leading to the judgments in Buttfield *v.* Stranahan, 192 U. S., 470, and Lawton *v.* Steele, 152 U. S., 133, makes to uphold the present statute. The destruction of inferior tea and unlawful fishnets, by summary process and without hearing is certainly no less an infraction of private right than is here complained of. Undoubtedly the power is great, and may be unjustly used, but if under this as under other sections of the Immigration Law, executive officers act under peril of suit or legal review, for abuse of discretion or malicious conduct;—those who bring diseased aliens into the country have as large judicial protection as have the aliens they bring;—in each instance as much as the nature of the case will (in Congressional opinion) permit.

The result I have reached is not consistent with the judgment directed on the trial of Cunard Co. *v.* Stranahan (*supra*). When that trial was had the more recent and important of the decisions committing immigration matters to executive officers had not been handed down, nor does it appear that the nature of clearance was argued; and in truth I find it difficult if not impossible to reconcile the direction of a verdict with the reported views on the demurrer. The safest plan is to regard only the reported decision, with which I agree, and in which I find nothing opposed to the views here advanced.

Let judgment for defendant be entered in each case.

August 24th, 1907.

C. M. HOUGH, *U. S. D. J.*

213 (Endorsed:) U. S. Circuit Court, S. D. N. Y.—Int. Merc. Mar. Co. *vs.* Stranahan.—Oceanic St. Nav. Co. *vs.* Stranahan.—Opinion, Hough, D. J.—8/24/07.—U. S. Circuit Court Southern District N. Y., Filed Aug. 26, 1907, John A. Shields, Clerk.

A Copy.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

214 [Endorsed:] File No. 21,306. Supreme Court U. S. October Term, 1908. Term No. 510. International Mercantile Marine Co., Pl'ff in Error, *vs.* Nevada N. Stranahan. Stipulation of counsel & addition to record. Filed Dec. 2d, 1908.

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1908.

No. 511.

INTERNATIONAL MERCANTILE MARINE COMPANY,
PLAINTIFF IN ERROR,

vs.

ELVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 24, 1908.

(21,307.)

(21,307.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 511.

INTERNATIONAL MERCANTILE MARINE COMPANY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 Circuit Court of the United States for the Southern District of New York.

No. 3. At Law.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

Petition for Writ of Error.

And now comes the International Mercantile Marine Company, the plaintiff herein, and says:

On or about the 25th day of June, 1908, the above named Circuit Court entered a judgment herein in favor of the defendant and against this plaintiff dismissing the complaint of the plaintiff in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear in detail from the assignment of errors which is filed with this petition.

2 Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

LORD, DAY & LORD,
Attorneys for Plaintiff, 49 Wall Street, New York, N. Y.

(Endorsed:) Circuit Court of the U. S., Southern District of N. Y.—International Mercantile Marine Company, Plaintiff in Error, against Nevada N. Stranahan, Defendant in Error.—Action No. 3.—Petition for Writ of Error.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall St. New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

3 Circuit Court of the United States for the Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

This 26th day of June, 1908, comes the plaintiff by its attorneys and files herein and presents to the Court its petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was ren-

dered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of
4 error, upon the plaintiff giving bond according to law in the sum of $250.00, which shall operate as a supersedeas bond.

C. M. HOUGH,
United States District Judge
Holding the Circuit Court.

(Endorsed:) U. S. Circuit Court, So. District of N. Y.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 3.—Order allowing writ.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—Service admitted. Henry L. Stimson, Atty. for Deft. Jun. 26/08.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 28, 1908, John A. Shields, Clerk.

5 THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the Circuit Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you between International Mercantile Marine Company, plaintiff, and Nevada N. Stranahan, defendant, Action No. 3 a manifest error hath happened, to the great damage of the said plaintiff, International Mercantile Marine Company as by its complaint appears, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the City of Washington on the 24 day of July 1908 next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being in-
6 spected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States the 26 day of June, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States of America the One hundred and thirty second.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States
for the Southern District of New York.

Allowed by
C. M. HOUGH,
United States District Judge.

7 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages, numbered from one to 171 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of International Mercantile Marine Company, Plaintiff in Error, *vs.* Nevada N. Stranahan, Defendant in Error, Action No. 3, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of August, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-third.

[Seal of U. S. Circuit Court, South. Dist., New York.]

JOHN A. SHIELDS, *Clerk.*

7a [Endorsed:] E. & Ac. 2781. U. S. Circuit Court Southern District of N. Y. International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant. (Action No. 3.) Writ of Error. Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York. Service Admitted. Henry L. Stimson, U. S. Att'y, Att'y for Def't. June 26/08. U. S. Circuit Court, Southern District N. Y. Filed Jun. 26, 1908. John A. Shields, Clerk.

8 Supreme Court, County of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Summons (as to Cause of Action No. 20).

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, July 16, 1906.

LORD, DAY & LORD,
Plaintiff's Attorneys.

Office and Post Office address, No. 49 Wall Street, Borough of Manhattan, City of New York.

9 Supreme Court, County of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Complaint (as to Cause of Action No. 20).

The plaintiff, complaining of the defendant, alleges:

For a First Cause of Action.

First. The plaintiff at all the times hereinafter mentioned was, and still is a corporation duly organized and existing by virtue of the laws of New Jersey, and was and now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Second. The defendant at all the times hereinafter mentioned was and now is Collector of Customs at the Port of New York in the United States of America.

Third. Among the steamships so owned, maintained and operated by this plaintiff, at the times hereinafter mentioned, were the steamships New York, Philadelphia, St. Paul, St. Louis, Zeeland, Vaderland, Finland, Kroonland, and Westernland.

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which its said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule. Any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

10 For a 20th and Further and Separate Cause of Action.

The plaintiff repeats the allegations contained in the first, second, third and fourth paragraphs of the first cause of action set forth in this complaint, and further alleges:

140th. On or about the 5 day of August, 1905, said steamship New York arrived at the Port of New York from foreign ports, pursuant to said schedule, having on board certain aliens who, as plaintiff is

informed and believes, purposed immigrating into the United States of America, among whom was one Hage Elias Faris who had embarked on said steamship at a foreign port as a passenger bound for the Port of New York.

141st. After the said arrival of said steamship at the Port of New York, and before the 12 day of August, 1905, on which date said steamship was scheduled as aforesaid to sail on a voyage from the Port of New York, the Commissioner of Immigration at the said Port of New York, acting under instructions of the Secretary of the Department of Commerce and Labor, and alleging that a certificate of the examining Government Surgeon who examined said alien upon his said arrival at the said Port of New York indicated that a fine should be imposed upon said steamship or its owner under the provisions of Section 9 of an Act of Congress, approved March 3, 1903, and entitled, "An Act to Regulate the Immigration of Aliens into the United States," upon the alleged ground, as plaintiff is informed and believes, that the said alien above named was at the time of his embarkation upon said steamship afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected by means of a competent medical examination at the time of such foreign embarkation, notified the plaintiff that said steamship would be granted clearance papers if ready to sail and be allowed to proceed on her outward bound voyage upon condition that the plaintiff deposited with the Collector of Customs at the Port of New York within twenty-four hours after the receipt of such notice or if said steamship should sail sooner prior to her sailing schedule the sum of one hundred dollars as security for the payment of such fine, should it be imposed, and said Commissioner did thereupon, as the plaintiff is informed and believes, direct the defendant as such Collector to refuse clearance to plaintiff's said steamship unless such sum was so paid to the defendant as such Collector.

142nd. On information and belief that at the time when said notice was given to the plaintiff there had been no proceeding, judicial or otherwise, wherein it had been established that the owner of said steamship or any other person was liable to a fine under the provisions of Section 9 of the said Act of Congress of March 3, 1903, and in directing the defendant of such collector to refuse clearance to plaintiff's said steamship unless said sum was so paid, as aforesaid, the said Secretary acted wholly without warrant or authority, in law or in fact, and in violation of the rights of the plaintiff under the Constitution and laws of the United States in excess of any power in him vested. If said Secretary or any other officer of the United States Government at any time prior to the exaction of the sum of one hundred dollars from the plaintiff as hereinafter alleged did conduct such proceeding wherein they or any of them pretended or endeavored to show that said steamship or its owner was or might be liable to said fine, under said provisions of said Act, the plaintiff was never given any notice of said proceeding and had no knowledge thereof and had no opportunity to be heard thereat.

143rd. On or about the 9 day of August, 1905, when the said

steamship was at the Port of New York ready to depart therefrom on a voyage for foreign ports, pursuant to said schedule, the defendant, pretending to act under the order of the said Secretary of the Department of Commerce and Labor and as Collector of the Port of New York, unlawfully and unjustly demanded and exacted from this plaintiff the payment of said one hundred dollars before any fine had been imposed pursuant to law, as a condition of granting clearance to said steamship for said voyage from the port of New York, which payment the plaintiff then made to the defendant as such collector involuntarily and under duress and only for the
11 purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of said schedule and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance. Such money so exacted from the plaintiff was received by the defendant as and for so much money had and received by him to the plaintiff's use.

144th. At the time of said exaction of said one hundred dollars from the plaintiff, as aforesaid, it was the uniform practice of the defendant as Collector, as aforesaid, whenever informed by the Secretary of Commerce and Labor that it appeared to his satisfaction that a steamship was or might be liable to a fine under Section 9 of the said Act of March 3, 1903, to refuse clearance to such steamship until a deposit of one hundred dollars was made, and the adoption of such a practice by the defendant had been made known by him among the steamship companies operating steamships between the Port of New York and foreign ports, including this plaintiff. At the time of the refusal to grant clearance and of the payment of said sum, as above set forth, to obtain such clearance it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of defendant of said sum and the refusal of the defendant to grant clearance without such payment were illegal and that all payments made by them, or any of them, to obtain such clearance were made involuntarily and under duress. Such exaction of said sum of one hundred dollars hereinbefore set forth was one of a series of exactions made under similar circumstances by the defendant as such Collector from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him.

145th. Said payment of said one hundred dollars made by the plaintiff to the defendant, as hereinbefore alleged, was made under protest and said sum was received by the defendant subject to said protest of the plaintiff.

146th. If said exaction of said sum from the plaintiff by said defendant, as aforesaid, was authorized by Section 9 of the Act of Congress, approved March 3, 1903, and entitled "An Act to Regulate

the Immigration of Aliens into the United States," then said Section of said act is unconstitutional and void, in that it deprives the plaintiff of its property without due process of law, in contravention of the Fifth Amendment of the Constitution of the United States of America, and also in that it denies to the plaintiff its rights under the Sixth Amendment to the Constitution of the United States of America, among which are those to a trial by jury, and to be informed of the nature and cause of the accusation against it in a criminal prosecution and otherwise, as stated in said Amendment.

Alleges an affirmative defense that after the payment of the one hundred dollars as security, a fine was duly imposed and the money was paid over to the United States.

12 Wherefore, the plaintiff demands judgment against the defendant for the sum of one hundred dollars ($100.00); with interest on One hundred dollars ($100) thereof from August 9, 1905; together with the costs of this action.

LORD, DAY & LORD,
Attorneys for Plaintiff.

Office and Post Office address, 49 Wall Street, New York, N. Y.

13 STATE, CITY AND COUNTY OF NEW YORK, *ss:*

P. A. S. Franklin being duly sworn, says: That he is the agent of the above named plaintiff; that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that the plaintiff is a foreign corporation, and that no officer of the plaintiff is now within the United States.

P. A. S. FRANKLIN.

Sworn to before me this 16 day of July 1906.

[SEAL.] W. A. JEFFRIES,
Notary Public, County of New York and Kings.

[Endorsed:] Supreme Court, County of New York. International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant. Summons and Complaint. Action No. 3. Lord, Day & Lord, Plaintiff's Attorneys, 49 Wall Street, Borough of Manhattan, City of New York.

14 Circuit Court of the United States, Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Answer.

The defendant answers the complaint as follows, the answer being made upon information and belief, except that he admits, as of his own knowledge, the fact that at all the times in the complaint mentioned he was and now is Collector of Customs at the Port of New York, in the United States of America.

As to the Twentieth Pretended Cause of Action.

I. As to paragraphs First, Second, Third and Fourth, which paragraphs are incorporated by reference into said Twentieth Pretended Cause of Action, defendant admits the allegations therein contained.

II. As to paragraph 140th, defendant admits the allegations therein contained.

15 III. As to paragraph 141st, defendant admits the allegations therein contained, but he further alleges that the certificate referred to in the said paragraph was in fact what he alleged it to be and was founded in fact upon the ground alleged, and the defendant refers to the original paper or papers concerned.

IV. As to paragraph 142nd, defendant denies the allegations and each of them therein contained, except that he admits that there had been no Court proceedings.

V. As to paragraph 143d, defendant denies the allegations and each of them contained, except that he admits and alleges that on or about the date alleged, acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, he lawfully and justly demanded and required from the plaintiff the payment of a fine or penalty of One hundred dollars, as a condition of granting clearance to said steamship upon its next outward voyage from the Port of New York, pursuant to its schedule, which payment the plaintiff then made to the defendant, as such Collector, filing thereupon a formal objection, as to the effect and character of which the defendant refers to the original thereof.

16 VI. As to paragraph 144th, defendant denies the allegations and each of them therein contained, except that he admits and alleges that it was his practice at all times to act fully in accordance with the law.

VII. As to paragraph 145th, defendant admits the allegations therein contained, except

(1) he denies that the payment was made as alleged in the preceding portions of the said pretended cause of action, and except

(2) he denies that any protest was made by reason of any such facts as alleged in the preceding portions of the said pretended cause of action, and except

(3) he denies that said sum was received by him subject to any protest.

VIII. As to paragraph 146th, defendant denies the allegations and each of them therein contained, and refers to the Constitution, the law and the statutes.

For a Second Defense to the said Twentieth Pretended Cause of Action.

IX. Defendant alleges that after the payment to him of the said sum as security, a fine or penalty for the said amount was
17 duly and lawfully imposed upon the plaintiff, and thereupon he duly and lawfully paid over to the United States of America the said sum, which theretofore he duly and lawfully had so held as security.

HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

Office and P. O. Address, Room 50, P. O. Building, Borough of Manhattan, New York City.

STATE OF NEW YORK,
County of New York, ss:

Nevada N. Stranahan, being duly sworn, deposes and says: That he is the defendant above-named; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

NEVADA N. STRANAHAN.

Sworn to before me this 10th day of June, 1907.

JO COX,
[SEAL.] *Notary Public, Kings Co.,*
Certificate Filed in N. Y. Co.

18 Circuit Court of the United States, Southern District of New York.

402.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

It is hereby stipulated that the issues in the above entitled action be tried by the Court without a Jury, the right to a trial by a Jury being expressly waived by both parties to this action; and it is

Further stipulated that the trial of the issues in the above entitled action be set down for trial subject to the convenience of the Court on Monday, April 29, 1907. Dated April 5, 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
U. S. Att'y, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District New York. Filed Apr. 5, 1907. John A. Shields, Clerk.

19 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Post Office Building in the Borough of Manhattan, City of New York, on the 23rd day of April, 1907.

Present: Hon. Charles M. Hough, District Judge.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Upon reading and filing the annexed affidavit of Darius F. Peck, verified April 22, 1907, and the annexed consent of the attorneys of the parties to this action, it is

Ordered that this action be divided into two several actions, one of which shall be known as Action No. 1, and shall contain the Tenth and Seventeenth causes of action set forth in the complaint herein, and the other to be known as Action No. 2, to contain the other causes of action set forth in the complaint herein, this severance to be without prejudice to the proceedings already had in this action.

Enter.

C. M. HOUGH,
U. S. District Judge.

20 United States Circuit Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

It is hereby consented that the foregoing order severing this action may be signed and entered without further notice.

Dated, April 22, 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
Attorney for Defendant.

21 United States Circuit Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

STATE OF NEW YORK,
County of New York, ss:

Darius E. Peck, being duly sworn, says:

That he is an attorney in the office of Lord, Day & Lord, the attorneys for the plaintiff in the above entitled action and is familiar with the proceedings had therein.

That the complaint contains twenty-six causes of action. The defendant has answered the causes of action therein contained numbered Ten and Seventeen. The time of the defendant to plead to, or move with respect to, the other causes of action set forth in said complaint has been extended until twenty days after notice to plead or move.

This affidavit is made in support of an application to sever the above entitled action into two several actions, one containing the Tenth and Seventeenth causes of action, set forth in the complaint herein, and the other containing the remaining causes of action, set forth in the complaint herein.

DARIUS E. PECK.

Sworn to before me this 22nd day of April, 1907.
CHARLES D. MILLER,
Notary Public, Suffolk Co.

Cert. Filed New York Co.

(Endorsed:) U. S. Circuit Court, Southern Dist. of New York.—International Mercantile Marine Company, Plaintiff, ag'st Nevada N. Stranahan, Defendant. Order of Severance, Consent and Affidavits.—Lord, Day & Lord, Att'ys for Plaintiff, 49 Wall St. New York.—U. S. Circuit Court, Southern District N. Y.. Filed Apr. 23, 1907. John A. Shields, Clerk.

22 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Post Office Building in the Borough of Manhattan, City of New York, on the 10th day of June, 1907.

Present—Hon. Charles M. Hough, District Judge.

Action No. 2.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Upon the annexed consent of the attorneys of the parties to this action, it is

Ordered that this action be divided into two several actions, one

of which shall continue to be known as Action No. 2, and shall contain all the causes of action set forth in the complaint herein, except the Tenth and Seventeenth causes of action which, by order of this court, duly entered on the 23rd day of April, 1907, were constituted Action No. 1, and except the Twentieth cause of action, which hereby is directed to constitute and be known as Action No. 3; and it is

Further ordered that this severance be without prejudice to the proceedings already had herein.

Enter:

C. M. HOUGH,
U. S. District Judge.

It is hereby consented that an order, in the above form, be made and entered without further notice.

Dated June 6, 1907.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
U. S. Attorney and Attorney for Defendant.

23 (Endorsed:) U. S. Circuit Court, Southern District of New York.—International Mercantile Marine Company, Plaintiff, *vs.* Nevada N. Stranahan, Defendant.—Action No. 2. Order of Severance and Consent.—Henry L. Stimson, United States Attorney, Att'y for Def't.—U. S. Circuit Court, Southern District, N. Y., Filed Jun- 10, 1907, John A. Shields, Clerk.

24 United States Circuit Court, Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

The defendant submits the following proposed findings of fact, which it deems established by the evidence herein, and the following proposed conclusions of law, upon which it requests the Court to rule:

Findings of Fact.

First. The plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and existing by virtue of the laws of the State of New Jersey, and was and now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Found. C. M. H.

25

Found. C. M. H.

Second. The defendant, at all the times hereinafter mentioned, was Collector of Customs at the Port of New York in the United States of America.

Found. C. M. H.

Third. Among the steamships so owned, maintained and operated by this plaintiff at the times hereinafter mentioned was the steamship "New York."

Found. C. M. H.

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which the said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule, and any interruption and disarrangement of said schedule would have seriously interferred with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

Found. C. M. H.

Fifth. On the respective days of arrival of the respective aliens mentioned in the complaint, the surgeon in charge at Ellis Island sent notices which were addressed to and received by the plaintiff and which reported that the respective aliens had been placed in the hospital with a disease of the eyes.

Found as Amended. C. M. H.

Sixth. At all the times mentioned in the complaint, the plaintiff had in Ellis Island its own representative whose business took him regularly there, and who inspected and had free access to the records of the hospital to which the said aliens were removed and to the other records at Ellis Island (including the minutes of the Special Inquiry Board which passed upon the right of the aliens to land and denied that right) and who could have reported to the plaintiff the sending of the respective aliens to the hospital, if they had so desired, or so been instructed by plaintiff.

Found as amended. C. M. H.

Seventh. From the surgeon's notices above mentioned and from the plaintiff's representative above mentioned and from the previous impositions of penalties the plaintiff knew or might have ascertained that the penalties prescribed under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect of the said aliens.

Eighth. At none of the times referred to in the complaint, and at no other time did the plaintiff ask for any hearing or

offer to submit any evidence or ask for any postponement of imposition of penalty or for any extension of time for obtaining or submitting evidence. Nor did it at any time send, or ask leave to send, a physician to Ellis Island for examination of any alien, which was always permitted.

Found. C. M. H.

Ninth. On or about January 25, 1905, the Secretary of the Department of Commerce and Labor issued a paper known as Department Circular No. 58, with the contents of which the plaintiff forthwith became familiar. This circular prescribed the method of procedure for the collection of fines for offences against the provisions of Section 9 of the Immigration Act of March 3, 1903, and was in terms as follows:

Found. C. M. H.

28 *Procedure for Imposition of Fines on Account of Bringing Diseased Aliens to the United States.*

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

Bureau of Immigration.

JANUARY 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of section 9 of the immigration act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathsome or dangerous contagious disease shall state in terms whether, in his judgment, the 'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.'

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph thereof, the commissioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner, or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz:

29 Department of Commerce and Labor, Immigration Service.

Office of —— ——,
Port of —— ——,
—— —, 190–.

To —— ——, —— of the steamship —— ——:
(Master, agent, owner, or consignee.)

In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of Alien:	Steamship:	Disease:
—— ——	—— ——	—— ——

(Signature) —— ——,
(Title) —— ——.

Received the above notice —— —, 190–, at —— —— M.
(Witness) —— ——. —— ——.

11-1640

The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the triplicate to be delivered to the col-
30 lector of customs, who will withhold clearance papers until the deposit is made.

3. Deposit.—The special deposit of $100, required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above-described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical

certificate and duplicate notice, in order that such action may be taken as the evidence requires.

4. Stay of Action.—If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2 of this circular, the deposit of $100. has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded, together with the certificate of the examining surgeon, to the Commissioner-General of Immigration, for presentation to the Secretary of Commerce and Labor, by the said commissioner or inspector in charge, who shall at the same time present his written views as to whether the said fine should be imposed. If no evidence is submitted prior to the expiration of the said fourteen days, then said commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

5. Final Proceedings.—Upon receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such data as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100. deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640

V. H. METCALF, *Secretary.*

31 Tenth. On or about August 6, 1905, said steamship "New York," belonging to the plaintiff, arrived at the port of New York from the Port of Southampton, England after a voyage of at least seven days, pursuant to its said schedule, having on board certain aliens who purposed immigrating into the United States, among whom was one Hage Elias Faris, who had embarked on said steamship at said Port of Southampton as a passenger bound for the Port of New York.

Found. C. M. H.

Eleventh. On or about the 8th day of August, 1905, the Commissioner of Immigration of the Port of New York caused the following notice to be sent to the plaintiff which was received by the plaintiff on the day of its date.

Found. C. M. H.

Notice of Liability on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in triplicate.)

OFFICE OF COMMISSIONER OF IMMIGRATION,
PORT OF NEW YORK, *August* 8, 1905.

To American Line, Owners of the Steamship "New York," August 6, 1905, 9 Broadway, New York City:

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien
32 whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship:	Disease:
Hage Elias Faris.	"New York."	Trachoma.

(Signed) ROBERT WATCHORN.
(Name)
Commissioner.
(Official title)

SMR.

Twelfth. On August 9, 1905, the Collector of the Port of New York transmitted to the Commissioner of Immi-
Found. C. M. H. gration at Ellis Island a letter of which the following is a copy:

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *August* 9, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y.

SIR: Referring to notices of liability for fines under Section 9 Act of March 3, 1903, I have to advise you that the Com-
33 pagnie Generale Transatlantique deposited with this office to day the sum of one hundred dollars in the case of the

alien passenger Meyer Halpern, who arrived on the S. S. "La Gascogne." Also that the agents of the S. S. "New York" deposited today the sum of two hundred dollars for the alien passengers Hage Elias Faris and Wordy Toome.

The fine of one hundred dollars in the case of the steamship "Bulgaria," alien passenger Moritz Lichenthal has not yet been deposited.

Respectfully,
(Signed) N. N. STRANAHAN, *Collector.*

Thirteenth. On August 8, 1905, the plaintiff deposited with the Collector of the Port of New York the sum of One hundred dollars ($100), making the said deposit involuntary and under duress for the sole purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of its schedule of sailings and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamships, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance.

Found as amended. C. M. H.

Fourteenth. At the time of said payment the plaintiff filed with the defendant the following written protest:

Found. C. M. H.

34 AUGUST 8TH, 1905.

Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $200, imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States Wordy Toome and Hage Elias Faris, passengers on the steamship "New York," arriving Aug. 6th, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

AMERICAN LINE,
INTERNATIONAL MERCANTILE
MARINE CO.

Fifteenth. On August 23rd, 1905, the said Commissioner of Immigration at Ellis Island, New York, transmitted to the Commissioner-General of Immigration at Washington, D. C., a copy of the medical certificate which had been made by the surgeon in charge at Ellis Island together with a letter of which the following is a copy which correctly stated the contents of the said certificate.

Found. C. M. H.

35 Department of Commerce and Labor, Immigration Service.

No. 19636.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *August* 23, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to enclose for your consideration, a certificate dated August 17, 1905, by the P. H. & M. H. Surgeon-in-charge here to the effect that Faris Hage Elias, ex S. S. "New York," American Line, August 6, 1905, has trachoma, a dangerous contagious disease; that said alien was afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time. I also enclose a duplicate notice served on the Line at 1:10 p. m., August 8, 1905, in accordance with Department circular No. 58.

The required deposit having been made with the Collector, a period of 14 days was allowed the Line within which to file evidence and show cause why a fine should not be imposed. No evidence or other statement having since been received from the Line, I recommend that a fine of $100 be imposed in accordance with section 9 of the Act of March 3, 1903.

Respectfully,

_____,
Commissioner.

SMR. Incl. 10960.

Sixteenth. Found. C. M. H. On August 24, 1905, the Assistant Secretary of the Department of Commerce and Labor transmitted to the Commissioner of Immigration at Ellis Island, a letter of which the following is a copy:

36 Department of Commerce and Labor.

No. 48969.

OFFICE OF THE SECRETARY.
WASHINGTON, *August* 24, 1905.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: The Department has received, under cover of your letter dated August 23, 1905, No. 19,636 the record in relation to the alien Faris Hage Elias, ex S. S. "New York," August 6, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above-mentioned alien was, at the time of foreign embarkation, afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected at that time by means of a competent medical examination.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which

port said vessel arrived, the sum of $100, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that the aomunt now held by him as a special depo-it on account of said diseased alien may immediately be covered into the Treasury as an immigration fine.

Respectfully,

LAWRENCE O. MURRAY,
Assistant Secretary.

FJP.

The facts in this letter stated to have appeared to the satisfaction of the Secretary did so appear to his satisfaction.

Seventeenth. On August 25, 1905, the Commissioner of Immigration at Ellis Island transmitted to the plain-
Found. C. M. H. tiff, a letter of which the following is a copy:

37 Department of Commerce and Labor, Immigration Service.

No. 19636.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *August* 25, 1905.

American Line, 9 Broadway, New York City.

GENTLEMEN: After careful consideration of all the facts relating to the alien Faris Hage Elias, who arrived on the steamship "New York" August 6, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100 has been assessed, and the Collector of the Port has been so informed. This action has been taken in conformity with Section 9 of the Act approved March 3, 1903. This notice is sent for your information.

Respectfully,

——— ———,
Commissioner.

CF.

Eighteenth. Thereupon the defendant paid over into the Treasury of the United States the sum of One hun-
Found. C. M. H. dred dollars ($100) so deposited with him.

Nineteenth. At the time of said deposit of said One hundred dollars ($100) by the plaintiff to the defendant, it was the uni-
38 form practice of the defendant as Collector of the Port of New York, whenever informed by the Commissioner of Immigration that it appeared to his satisfaction that a steamship, or its owner, was, or might be, liable to a fine under
Found. C. M. H. Section 9 of said Act of March 3, 1903, to refuse clearance to such steamship until a payment of One hundred dollars ($100) was made to him, and the adoption of such a practice by the defendant had been made known by him to and among the steamship companies operating steamships

between the Port of New York and foreign ports, including the plaintiff.

Twentieth. At the time of the refusal to grant clearance to said steamship, and of the payment of said sum of One hundred dollars ($100) to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for said sum and the refusal of the defendant to grant clearance without such payment, were illegal.

Found. C. M. H.

Twenty-first. Said exaction of One hundred dollars ($100) was one of a number of exactions made under similar circumstances by the defendant, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Found. C. M. H.

Found as amended. C. M. H.

Twenty-second. Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity.

Twenty-third. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf of the United States or any officer thereof.

Found. C. M. H.

Twenty-fourth. No part of said sum so paid to the defendant by the plaintiff in the case of the said alien, Hage Elias Faris, has been repaid to the plaintiff.

All found. C. M. H.

Conclusions of Law.

I. The collection of the said sum of One hundred dollars ($100) under the circumstances hereinbefore set forth, from the plaintiff by the defendant, were authorized by Section 9 of the Act of Congress approved March 3, 1903, and entitled "An Act to Regulate the Immigration of Aliens into the United States."

II. The said Section of the said Act is constitutional.

III. The said sum of One hundred dollars ($100) was constitutionally collected.

IV. The payment of the said sum of One hundred dollars ($100) was a lawful condition imposed upon the privilege of clearance.

V. The defendant is entitled to judgment dismissing the complaint on the merits with costs; and I hereby direct judgment to be entered accordingly.

Respectfully submitted.

HENRY L. STIMSON,
U. S. Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Jun. 16, 1908, John A. Shields, Clerk.

41 United States Circuit Court, Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

The plaintiff submits the following proposed findings of fact, which it deems established by the evidence herein, and the following proposed conclusions of law, upon which it requests the Court to rule:

Findings of Fact.

First. The plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and existing by virtue of the laws of the State of New Jersey, and was and now is engaged in the business of owning, maintaining and operating lines of steamships for the transportation of passengers and merchandise between foreign ports and ports in the United States of America.

Found. C. M. H.

Second. The defendant, at all the times hereinafter mentioned, was and still is Collector of Customs at the Port of New York in the United States of America.

Found. C. M. H.

42 Third. Among the steamships so owned, maintained and operated by this plaintiff at the times hereinafter mentioned was the steamship "New York."

Found. C. M. H.

Fourth. Said steamships were run and operated by this plaintiff between the Port of New York and foreign ports under a schedule which was issued to the public and advertised in the newspapers and otherwise, and pursuant to which the said steamships were scheduled to make voyages between said Port of New York and such foreign ports at regular intervals; and the business of the plaintiff was arranged and conducted in accordance with said schedule; and contracts were made by the plaintiff for the carriage to foreign ports of passengers and merchandise by all of its steamers above named, by which contracts it was required that such steamers should respectively sail from the Port of New York on the dates fixed and shown by said schedule, and any interruption and disarrangement of said schedule would have seriously interfered with the business of the plaintiff and would have subjected the plaintiff to great loss and damage.

Found. C. M. H.

Fifth. On or about January 25, 1905, the Secretary of the Department of Commerce and Labor issued a paper, known as Department Circular No. 58, prescribing the method of procedure for the

Found. C. M. H.

collection of fines for offenses against the provisions of Sec-
43 tion 9 of the Immigration Act of March 3, 1903. Said department circular was in terms as follows:

"*Procedure for Imposition of Fines on Account of Bringing Diseased Aliens to the United States.*

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

Bureau of Immigration.

JANUARY 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of section 9 of the immigration act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathsome or dangerous contagious disease shall state in terms whether, in his judgment, the 'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.'

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph thereof, the commissioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz.:

44 Department of Commerce and Labor, Immigration Service.

Office of ——— ———,
Port of ——— ———,
——— —, 190–.

To ——— ———, ——— of the steamship ——— ———:
(Master, agent, owner, or consignee.)

In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien: —— —— Steamship: —— —— Disease: —— ——

(Signature) —— ——,
(Title) —— ——.

Received the above notice —— —, 190–, at —— —— M.
(Witness) —— ——. —— ——.

11-1640.

The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the triplicate to be delivered to the collector of customs, who will withhold clearance papers until the deposit is made.

45 3. Deposit.—The special deposit of $100 required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical certificate and duplicate notice, in order that such action may be taken as the evidence requires.

4. Stay of Action.— If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2, of this circular, the deposit of $100 has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded, together with the certificate of the examining surgeon, to the Commissioner-General of Immigration, for presentation to the Secretary of Commerce and Labor, by the said commissioner or inspector in charge, who shall at the same time present his written views as to whether the said fine should be imposed. If no evidence is submitted prior to the expiration of the said fourteen days, then said

commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

5. Final Proceedings.—Upon receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such data as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100 deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640. V. H. METCALF, *Secretary.*"

Sixth. On or about August 6, 1905, said steamship "New York", belonging to the plaintiff, arrived at the Port of New York
46 from the Port of Southampton, England, after a voyage of at least seven days, pursuant to its said schedule, having on board certain aliens who purposed immigrat-
Found. C. M. H. ing into the United States, among whom was one Hage Elias Faris, who had embarked on said steamship at said Port of Southampton as a passenger bound for the Port of New York.

Seventh. On or about the 8th day of August, 1905, the Commissioner of Immigration of the Port of New
Found. C. M. H. York caused the following notice to be sent to the plaintiff, which was received by the plaintiff on or about the day of its date:

"Notice of Liability on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.)

OFFICE OF COMMISSIONER OF IMMIGRATION,
PORT OF NEW YORK, *August* 8, 1905.
August 6, 1905.

To American Line, Owners of the Steamship "New York,"
9 Broadway, New York City:

In conformity with the requirements of the Department Circular No. 58, you are hereby notified that the certificate of the Examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen
47 days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clear-

ance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port withing twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of Alien:	Steamship:	Disease:
Hage Elias Faris.	"New York."	Trachoma.

(Signed) ROBERT WATCHORN,
(Name.)
Commissioner.
(Official Title.)

SMR.

Eighth. Said letter was the first notice the plaintiff received that the imposition of a fine under Section 9
Found. C. M. H. of the Immigration Act of 1903 was contemplated by any officer of the United States Government with reference to said alien, Hage Elias Faris.

Ninth. In directing said deposit to be made the Commissioner of Immigration acted only upon a certificate of the surgeon in charge at Ellis Island that the said
Found. C. M. H. alien was suffering from trachoma, and that the existence of said disease might have been detected at the time of foreign embarkation.

Tenth. On August 9, 1905, when said steamship "New York" was at the Port of New York, ready to depart therefrom on a voyage to foreign ports, pursuant to its said schedule, the defendant, acting under the order of the Secretary of the Department of Com-
48 merce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff the payment of One hundred dollars ($100) before any fine had been imposed as a condition of granting clearance to said steamship for said voyage from the Port of New York, which payment the plaintiff then made to the defendant, as such collector, involuntarily and under duress and only for the purpose of avoiding
Found. C. M. H. the serious loss and damage which would result from the interruption and disarrangement of the said schedule, and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamships, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance.

Eleventh. At the time of said pay-
Found. C. M. H. ment the plaintiff filed with the defendant the following written protest:

AUGUST 8, 1905.

"Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $200, imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States Wordy Toome and Hage Elias Faris, passengers on the Steamship 'New York', arriving Aug. 6th, 1905, found to be afflicted with Trachoma, involuntarily
49 and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

AMERICAN LINE,
INTERNATIONAL MERCANTILE MARINE CO."

Twelfth. At the time of said exaction and payment of said One hundred dollars ($100) by the plaintiff to the defendant, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of Commerce and Labor that it appeared to his satisfaction that a steamship, or its owner, was, or might be, liable to a fine under
Found. C. M. H. Section 9 of said Act of March 3, 1903, to refuse clearance to such steamship until a payment of One hundred dollars ($100) was made to him, and the adoption of such a practice by the defendant had been made known by him to and among the steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff.

Thirteenth. At the time of the refusal to grant clearance to said steamship, and of the payment of said sum of One hundred dollars ($100) to obtain such clearance, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and
50 foreign ports claimed that the demand of the defendant for said sum and the refusal of the defendant to
Found. C. M. H. grant clearance without such payment, were illegal, and that all payments were by them, or any of them, to obtain such a clearance were made involuntarily and under duress.

Fourteenth. Said exaction of One hundred dollars ($100) was one of a number of exactions made under
Found. C. M. H. similar circumstances by the defendant, and the protests of all of such companies against such exactions had at all times been disregarded by him.

Fifteenth. The period of fourteen days from the receipt of said letter of August 18, 1905, within which
Found as amended. to submit evidence, did not afford the plain-
C. M. H. tiff a reasonable opportunity to obtain evidence from the port of embarkation and be heard upon the question whether a fine should be imposed in the case of said alien.

Sixteenth. The usual period of mail com-
Found C. M. H. munication between the Port of Southampton in England and the Port of New York, in the year 1905, was at least seven days each way between said Port of Southampton and said Port of New York.

Seventeenth. After the payment of said sum of One hundred dollars ($100) to the defendant on August 9, 1905, and on August
51 24, 1905, the Secretary of the Department of Commerce and Labor imposed a fine under Section 9 of said
Found. C. M. H. Immigration Act of March 3, 1903, upon the plaintiff on account of said alien, Hage Elias Faris, without further notice to the plaintiff and without further proceedings or trial, judicial or otherwise.

Eighteenth. In imposing said fine, the Secretary of the Department of Commerce and Labor acted solely upon a medical certificate of the surgeon in charge at Ellis Island to the effect that the alien, Hage Elias Faris, was afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation,
Found. C. M. H. and that its existence might have been detected by means of a competent medical examination at said time, and upon a letter of the Commissioner of Immigration at New York informing him that fourteen days had elapsed from the time of the payment of said One hundred dollars ($100), and that no evidence or statement had been received from the plaintiff.

Nineteenth. In imposing said fine the Secretary of the Depart-
Refused. C. M. H. ment of Commerce and Labor acted without any opportunity to the plaintiff to be heard.

Twentieth. Said fine was imposed by the Secretary of the Depart-
Found. C. M. H. ment of Commerce and Labor without a trial to establish the liability of the plaintiff to said fine before any tribunal whatsoever.

52 Twenty-first. Said fine was imposed by said Secretary of the Department of Commerce and Labor
Found. C. M. H. without any judicial trial to establish the liability of the plaintiff to said fine.

Twenty-second. Said fine was imposed by said Secretary of the Department of Commerce and Labor and without any suit at law or in equity and without any proceeding or hear-
Found as amended. C. M. H. ing whatever of which the plaintiff had notice and a reasonable opportunity to be heard and to produce evidence from the port of embarkation.

Twenty-third. No suit or action to recover said fine was instituted or commenced or prosecuted by or on behalf
Found. C. M. H. of the United States or any officer thereof.

Twenty-fourth. At the time of the arrival of said alien at the Port of New York, the plaintiff had at Ellis Island a person known as a landing agent, whose duties were ex-

clusively to look after the welfare of the aliens arriving by said steamships, and to see that they were properly forwarded to their respective destinations.

Found as Amended. C. M. H.

53 Twenty-fifth. There was no evidence produced on the trial that in the case of the alien, Hage Elias Faris, the said landing agent was in fact notified of the intention of any officer of the United States Government to impose a fine in the case of said alien under the provisions of Section 9 of the Immigration Act of March 3, 1903.

Found. C. M. H.

Twenty-sixth. No part of said sum of One hundred dollars ($100) so paid by the plaintiff to the defendant has been repaid to the plaintiff.

Found. C. M. H.

All refused. C. M. H.

Conclusions of Law.

First. The provisions of the Immigration Act of March 3, 1903 did not authorize the Secretary of the Department of Commerce and Labor to adopt the procedure for the collection of fines for offenses against the provisions of Section 9 of said Act, set forth in Department Circular No. 58, issued by said Secretary on or about January 25, 1905.

Second. The provisions of the Immigration Act of March 3, 1903, did not authorize the exaction of $100, from the plaintiff in the case of the alien Hage Elias Faris before any fine had been imposed upon the plaintiff.

Third. The provisions of the Immigration Act of March 3, 1903, did not authorize the withholding of clearance to plaintiff's
54 steamship at New York in the case of the alien, Hage Elias Faris before any fine had been imposed in that case.

Fourth. The exaction of $100 from the plaintiff in the case of the alien Hage Elias Faris deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Fifth. The imposition of the fine upon the plaintiff, in the case of the alien Hage Elias Faris, was in violation of the right of the plaintiff to have its liability to such fine established by judicial trial under Section 1 of Article III of the Constitution of the United States.

Sixth. The imposition of the fine upon the plaintiff, in the case of the alien Hage Elias Faris, was in violation of the plaintiff's right under the third subdivision of Section 2 of Article III of the Constitution of the United States to a trial by jury in a criminal prosecution.

Seventh. The imposition of the fine upon the plaintiff, in the case of the alien Hage Elias Faris, was in violation of the right of the plaintiff under the Sixth Amendment to the Constitution
55 of the United States to a speedy and public trial by an impartial jury to be informed of the nature and cause of the

accusation and to be confronted by the witnesses against it and otherwise as stated in said amendment.

Eighth. The imposition of the fine upon the plaintiff in the case of the alien Hage Elias Faris deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Ninth. Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the liability to such fine or penalty.

Tenth. Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the guilt of the accused.

Eleventh. Congress has no power under the Constitution of the United States to provide for the taking of the property of any person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such per-
56 son and without a reasonable opportunity for such person to be heard.

Twelfth. Under Section 9 of the Immigration Act of March 3, 1903, clearance cannot be refused unless a fine has been illegally imposed for an offense against the provisions of said Act.

Thirteenth. Congress has no power to authorize the Secretary of the Department of Commerce and Labor or any other executive officer of the United States Government to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

Fourteenth. Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

Fifteenth. Congress has no power under the Constitution of the United States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act
57 of March 3, 1903, in advance of a trial or hearing to establish the liability for such fine.

Sixteenth. Congress has no power under the Constitution of the United States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of March 3, 1903, in advance of a trial or hearing to establish the guilt of the accused.

Seventeenth. The provisions of the Act of March 3, 1903, did not authorize the adoption by the Secretary of the Department of Commerce and Labor of the regulations and procedure set forth in Cir-

cular 58 as a method for the imposition and collection of a fine for an offense against the provisions of Section 9 of said Act.

Eighteenth. The plaintiff is entitled to judgment for the recovery of the sum of $100, paid to the defendant in the case of the alien, Hage Elias Faris, with interest from the date of such payment.

Respectfully submitted,

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jan- 16, 1908, John A. Shields, Clerk.

58 At a Stated Term of the United States Circuit Court, held in and for the Southern District of New York, at the United States Court and Post-office Building, Borough of Manhattan, City of New York, on the 22 day of June, 1908.

Present: Hon. Charles M. Hough, District Judge.

Action, No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

This cause having come on to be tried before the undersigned pursuant to a waiver of a jury, duly filed herein, and an opinion having been rendered by the Court, and filed, and findings of fact and conclusions of law having, in accordance with said opinion, been duly made and filed herein,

Now on reading and filing the said findings of fact and conclusions of law, and after hearing Lucius H. Beers and William G. Choate, Esqs., of counsel for the plaintiff, and Henry L. Stimson, Esq., United States Attorney, of counsel for the defendant, on motion of Henry L. Stimson, United States Attorney, attorney for the defendant, it is

Ordered that judgment be entered dismissing the complaint herein with costs to be taxed.

C. M. HOUGH,
U. S. Judge.

The above is agreed to as to form.

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, Southern District of New
59 York.—Action No. 3.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Order for Judgment. Henry L. Stimson, United States Attorney, Attorney for Deft.—Due service of a copy of the within is hereby admitted. New York, June 19, 1908. Lord, Day & Lord, Attorneys for Plff.—U. S. Circuit Court, Southern District N. Y. Filed Jun- 22, 1908. John A. Shields, Clerk.

60 United States Circuit Court, Southern District of New York.

Action, No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

The issues in this action having been brought on for trial before the Hon. Charles M. Hough, District Judge, pursuant to a waiver of a jury, duly filed herein, and the plaintiff appearing by Lord, Day & Lord, and the defendant by Henry L. Stimson, United States Attorney, and the issues having been tried and a decision having been duly rendered in favor of the defendant directing a dismissal of the complaint with costs to be taxed,

Now on motion of Henry L. Stimson, United States Attorney, attorney for the defendant, it is

Adjudged that the complaint herein be and it is hereby dismissed with Thirty & 40/100 dollars ($30.40) costs.

Dated New York, June 26, 1908.

JOHN A. SHIELDS.

Consented to as to form.
LORD, DAY & LORD.
Attorneys for Plaintiff.

61 (Endorsed:) U. S. Circuit Court, Southern District of New York.—Action No. 3.—International Mercantile Marine Company, *vs.* Nevada N. Stranahan.—Judgment.—Henry L. Stimson, United States Attorney, Attorney for Deft.—U. S. Circuit Court, Southern District N. Y.. Filed Jun- 26, 1908. John A. Shields, Clerk.

62 Circuit Court of the United States, Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Bill of Exceptions.

This cause came on for trial on June 17, 1907, at a term of this Court held by the Hon. Charles M. Hough, United States District Judge, holding said Court pursuant to statute.

Messrs. Lord, Day & Lord appeared for the plaintiff; Mr. William G. Choate and Mr. Lucius H. Beers, of counsel.

Henry L. Stimson, United States Attorney, appeared for the defendant; Mr. W. T. Denison and Mr. Felix Frankfurter, Assistant U. S. Attorneys.

This cause was tried at the same time with an action brought by the same plaintiff against the same defendant, known as Action No. 1, and at the same time as an action brought by the Oceanic Steam Navigation Company, Limited against the same defendant. The appearances for the plaintiff in each case were the same and the appearances for the defendant in each case were the same.

It was stipulated that all the testimony taken in the three actions should apply to each of the three actions.

The following proceedings were had in the above entitled cause, to wit:

A trial by jury was expressly waived by stipulation in writing dated April 5, 1907.

63 By stipulation the plaintiff was allowed to amend its complaint, paragraph number One hundred forty-sixth by adding at the end of said paragraph the following words:

"And also in that it gives to an executive officer of the Government powers which by Article III of the Constitution are given only to the judiciary, and denies to the plaintiffs a trial by jury in contravention of Subdivision 3 of Section 2 of Article III of the Constitution."

Said amendment to the plaintiff's complaint was made without prejudice to the proceedings already had in the action, and it was stipulated that the answer of the defendant to the complaint should stand as the answer to the complaint as so amended.

64 Testimony of SAMUEL S. CORTES, a witness called by the plaintiff, taken by deposition on May 16, 1907, pursuant to stipulation of parties.

Direct examination by Mr. BEERS:

I am connected with the Oceanic Steam Navigation Company, and have been with that Company since 1876. I have charge of the steerage passenger department of the White Star Line. Any communication with the United States Government or from any Government officials in relation to the enforcement of the Immigration Laws, would come to me in the ordinary course of the business of that Company. Those matters have been entirely in my charge ever since the Immigration Laws came into effect. I have made a special study and examination of the various Immigration Laws, which have been passed by Congress during the time that I have been connected with the Company.

The duties of my position require that I should be especially familiar with those laws.

I recall the first demand for payment which was made on the Oceanic Steam Navigation Company, under the provisions of Section 9 of the Immigration Act of 1903. The letter which you show me was received by me shortly after it came into the office, in fact it was seen by me first of all, and then passed over to the other gentlemen who put their initials on it.

Mr. BEERS: I offer the letter in evidence.

Letter is received in evidence and marked plaintiff's Exhibit 1.

By agreement the letter is transcribed into the minutes as follows:

65 PLF'F'S EX. 1. May 16-'07—D.

"M. P. M. Customs Service, Office of the Collector.

Law Division, Solicitor to the Collector.

'Arabic.'

NEW YORK, N. Y., *July* 16, 1903.

(TW.)

Master S. S. "Arabic," c/o White Star Line, 9 Broadway, N. Y.

SIR: The Secretary of the Department of Commerce and Labor has imposed a fine of $100 upon the S. S. "Arabic," because he is satisfied that the alien Johann Klaara, who arrived per "Arabic" on July 5th, was at the time of embarkation afflicted with trachoma, a dangerous, contagious disease.

Please call at this office without delay in regard to the matter.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector.

F. R. $100.
H.

SC.
W.

Cashier's Office.
Paid
July 18, 1903.
Custom House,
N. Y.

To Mr. Cortes, Please initial.

Accountant's
New York
Department."

66 The WITNESS: To the best of my ability this letter, plaintiff's Exhibit 1, was the first notice of any sort, which was received by the White Star Line in reference to this first demand under Section 9 of the Immigration Act. The Oceanic Steam Navigation Company is the corporate name of the White Star Line. That line is the owner of the Steamship "Arabic." In the course of the business of the White Star Line, any notice or letters with respect to demands under Section 9 of the Immigration Act, would have come to me. They would have to bear my initial before they could be dealt with. This letter, plaintiff's Exhibit 1, bears my initials.

Q. Did you, prior to the receipt of this letter (Plaintiff's Ex. 1) receive any notice of any description that any officer of the United States Government was considering or was about to consider the question of imposing any fine on the White Star Line or on any officer or employee of that line by reason of the transportation to the United

States of any passengers who were carried on the S. S. "Arabic" on the voyage terminating at the Port of New York in July 1903?

A. If any such notice were received it would have been attached to that letter; all those documents are kept together and filed.

Q. I call your attention to Plaintiff's Ex. 1 and ask whether from an examination of the letter and from the fact that no other documents are connected with it excepting a blank voucher, you can testify whether or not you did receive any previous notice of any description?

A. As I said previously, if any previous notice had been received it would have been attached to this letter, therefore, no notice was received.

Q. And can you then testify that no notice was received?

A. I can.

Q. Did you ever hear in any way of any other notices?

A. No, sir.

Q. I call your attention to the final clause in this letter (Plaintiff's Exhibit 1), asking you to call at the office of the solicitor to the collector and ask you to state fully what you did in response to that request?

A. I proceeded to the Custom House I think the same day I received this letter, in fact, I am sure of it. I called on Mr. Hamilton and I protested against the imposition of the fine on the ground that it was unjust, for the reason that we had been deprived of all opportunity to defend ourselves, and I considered that we were entitled to call in expert testimony. I took the ground that a doctor frequently makes mistakes in the diagnosis of a case, and I gave my own case as an example. I stated to Mr. Hamilton that according to an expert's opinion some eight years before I ought to be perfectly blind. I had my eyes examined by Dr. Callan, a specialist in eye diseases, a man of reputation, who, after examining my eyes carefully, stated that within three years I would be blind from cataract. My eyes to-day, allowing for the difference in age, are as good as then. I stated that as a ground that the Steamship Company should be afforded an opportunity to test the cases through a medical officer. Mr. Hamilton agreed with me in this and gave his own case as an incident. He offered himself to an insurance company for a policy and was refused. He applied to another company and was promptly accepted. We discussed the matter very fully, but he wound up by saying that I did not have any cause to complain because notice was being given to another line, informing them of the imposition of a fine of $800. I left him and we had to pay the fine. Nothing was suggested at all that the Government was willing to waive or relax this demand.

Q. Did the White Star Line pay this sum of $100, demanded in this first Exhibit 1?

A. We had to.

Q. What effect would it have had on the business of the White Star Line if clearance of the "Arabic" had *had* been refused?

A. She would have been held up and could not sail.

The WITNESS: She is sailing on a regular schedule. The White

Star Line had entered into contracts for the carrying of passengers and freight on the "Arabic." We had quite a number of passengers on the ship.

The White Star Line paid the $100 demanded by this letter, because the ship would have been held up by the authorities if we had not paid it. That was the only reason for our paying it. I do not think that Mr. Hamilton at the conversation as to which I have testified said anything to me about clearance being withheld if the fine was not paid. I believe we received an official notice that it would have to be paid, or clearance withheld, in fact the law states so; that clearance should be withheld until the fine is paid.

Q. Have you been, Mr. Cortes, from the nature of your position in the Oceanic Steam Navigation Company, in frequent com-
69 munication with other steamship lines in reference to matters relating to the enforcement of the United States Immigration Laws?

A. I am chairman of the Ellis Island committee which has to deal with all matters connected with Ellis Island where all these matters are discussed and where any grievances are discussed, resulting in frequent interviews with the Commissioner and also in taking legal advice.

Q. Do you know whether after the passage of the Immigration Act of 1903, the Collector of the Port of New York, adopted a uniform custom and rule in reference to exacting payments as a condition of granting clearance in all cases where it had been certified to him that a fine had been imposed under Section 9 of the Immigration Act, and if you do know about such a rule, what was the rule?

A. The rule was that when the Custom officers went to clear the ship, we had to deposit the fine of $100. That was always the case with us and I do not think there was any difference in regard to the other lines. I never heard of any line that did not have to pay the fine prior to clearance. I did not have any subsequent conversation with Mr. Hamilton, nor with the collector, in reference to this subject. We were given to understand that the position was final in each case. This payment of $100, was paid at the time before the "Arabic" left, as near as I can remember. It was paid immediately before I next applied for clearance.

The letter which you show me was received by me. It bears my initials.

Mr. BEERS: I offer the letter in evidence.

Letter received in evidence and marked Plaintiff's Exhibit 2.

70 By agreement the letter is transcribed into the minutes as follows:

Ex. 2. May 16-07-D.

"UNITED STATES CUSTOMS SERVICE. 9865
PORT OF NEW YORK, *October* 8, 1903.

White Star Line, 9 Broadway, N. Y.

GENTLEMEN: I have to inform you that the Department of Commerce and Labor has imposed a fine of one hundred dollars upon the

steamship "Germanic" because it is satisfied that the alien Paolo Nacchi, a passenger ex "Germanic", October 2nd, was at the time of embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

Respectfully,

F. E. HAMILTON, *S. C.*,
Solicitor to the Collector.

F. R.
$100.
H.

W (TW)

(Cashier's Office
Paid.
October 21, 1903.
Custom House
N. Y.)"

Q. Please examine this letter (Plaintiff's Ex. 2) together with the voucher annexed to it and state whether it is the first notice of any kind which was received by the White Star Line that any officer of the United States Government was considering or was about to consider the question of imposing any fine on the White Star Line or on any officer or employee on any ship of that Line by reason of the transportation of any passengers who were on board the S. S. "Germanic" on her voyage to the Port of New York ending in October 1903?

71 A. The Commissioner at Ellis Island, I think, about that time, adopted a different system. I think he gave the Steamship Companies notice that he had notified the Collector of the Port that a fine had been imposed or rather he notified the Steamship Companies that the Collector of the Port had been notified that a fine had been imposed, and after that we received this notice from the Collector. I cannot remember the exact date when the Commissioner adopted the plan of notifying the Steamship Companies, but the notice that a fine had been imposed by the Commissioner preceded the notice from the Collector of the Port probably two days, but there was no opportunity for people to appeal or say anything in defense.

Q. Were these notices which you say you think the Commissioner at Ellis Island sent to the Steamship Companies, notices that the fine had been imposed?

A. That a fine had been imposed in accordance with section 9. I am almost certain that if such a notice had been received it would have been attached to that letter.

The WITNESS: I recall the circumstances connected with the payment of these various fines under Section 9 of the Immigration Law and the circumstances under which payment was demanded.

In every case which arose prior to the first of January, 1905, the first notice received by the White Star Line was a notice that a fine had been imposed. The White Star Line paid the sum of $100, which was demanded in the letter of October 8, 1903,

Plaintiff's Exhibit 2. Payment was made because clearance would have been withheld if we had not done so. If clearance had been withheld the ship would have been held up. The business would have been very seriously disorganized. Both payments, made
72 under the demand contained in Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2, were made for the purpose of obtaining clearance at the next time when application was made for clearance for the "Germanic" and "Arabic" respectively.

Cross-examination by Mr. DENISON:

I cannot remember how long I have been chairman of the Ellis Island Committee. I should say about three or four years. I was not chairman of the committee at the time of these facts to which I refer. The Committee was not organized until some time afterwards.

I have had personal charge of the Ellis Island matters for my company ever since Ellis Island was established. I have always since that time informed myself as to the immigration laws; it is my duty. I am compelled to, among others with Section 9 of the Act of March 3, 1903. In July, 1903, I was familiar with these laws and with that section.

Q. Did your company have a landing agent down there at Ellis Island?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial, upon the question of imposition of a fine.

Objection overruled; exception.

A. They did; it was Mr. Phillips; he had been landing agent there for the last fifteen years.

Q. What have been his duties in that position?

Mr. BEERS: Same objection, on same ground.

Objection overruled; exception.

A. His duties are simply to attend to the landing and forwarding of passengers, to assist passengers, and to deliver them money which we have received for them.

I have seen a paper like the paper entitled "Surgeon's Notice that passenger has been sent to Hospital," which you show me.

73 Mr. DENISON: I offer in evidence this paper.

Mr. BEERS: I object to the admission of this paper in evidence as incompetent, irrelevant and immaterial, and having nothing to do with the imposition of a fine.

Objection overruled; exception to plaintiff.

Paper received and marked "Defendant's Exhibit A."

By agreement the paper is transcribed into the minutes as follows:

Ex. A. May 16–07.

"Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *May* 16, 1907

Agent, White Star Line, 9 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving May 16, 1907 per Steamship "Cedric" and this day placed in hospital, for reasons given below:

			Immigrant:	
8000.	John Jones.	26	Ireland—	Disease of eyes.

Respectfully,

GEO. W. STONER.
Surgeon in Charge."

Cross-examination continued by Mr. DENISON:

Q. Similar notices to that have been forwarded to your company for many years?

74 Mr. BEERS: I object to this question on the ground that it is incompetent, irrelevant and immaterial, and having nothing to do with the imposition of a fine.
Objection overruled: exception.

A. Yes.

Q. Was it the practice of the department, or of the bureau at Ellis Island to send to your company notices similar to this, Defendant's Exhibit A, as early as July 1903?

Mr. BEERS: Same objection on the same grounds.
Objection overruled: exception.

A. I think so, yes

Q. Was your company called upon to pay the hospital expenses of immigrants forming the subjects of notices like Exhibit A?

Mr. BEERS: Same objection on the same grounds
Objection overruled: exception.

A. Yes.

Q. Did you keep a check on such charges?

Mr. BEERS: Same objection on the same grounds.
Objection overruled: exception.

A. Yes.

Q. When bills came in for immigrants brought over by your company how would you check up the correctness of these bills?

Mr. BEERS: Same objection on the same grounds.
Objection overruled: exception.

A. As soon as we received these reports (referring to Exhibit 1 we checked up the numbers and the amounts charged.

The WITNESS: They were not checked by the landing agent any other person. We simply took our landing agent's reports th these men had been sent to the hospital. He would not alwa
75 repo[illegible] for what reason the aliens would be sent to the ho pital. In some cases he did, for instance, scarlet fever, a such diseases he would report on.

I am aware that Section 9, imposing a fine on the steamship co pany for bringing in aliens suffering from certain diseases, indicat such diseases discovered at the time of shipment.

Q. Now, are you clear whether or not at the time you receiv Exhibit 1, or thereabouts, you received any written notice that clea ance would be withheld?

A. We certainly should not have paid the fine before clearance we had not received such a notice.

The witness continuing:

Such a notice, if it had been received, would probably have bee attached to the same paper as part of the file in that matte but inasmuch as that was the first fine paid, I am not quite sure o that matter.

Q. After the time that fine was paid concerning the case of Jul 5 or thereabouts, did your company change its practice with referenc to dealing with the situation at Ellis Island?

Mr. BEERS: Objected to as incompetent, irrelevant and immat rial.

Objection overruled; exception.

A. No, sir. I cannot recall that prior to the time when the firs fine was imposed upon my company, that I had any conversation with other steamship representatives on the subject of Section 9. cannot say that I knew of the imposition of any fine under that se tion upon other companies prior to that time, but it is possible might; but I could not say either one way or the other.

The subject had not made any special impression upon my mind prior to the receipt of Exhibit 1, except the fact that I wa
76 dreading that we should be fined. I had not had any co versation with steamship companies generally upon the sub ject. I cannot remember whether I did afterwards.

Q. Mr. Cortes, since January, 1905, which was the time the chang of practice was made by the Government, has your Company mad any change in its practice?

Mr. BEERS: Objected to as incompetent, irrelevant and immate rial.

Objection overruled; exception.

A. Not at all.

Q. Have you ever asked for any hearing in any of these cases?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. No, sir.

Q. Have you ever offered any evidence in these cases?

Mr. BEERS: Objected to on the same grounds.
Objection overruled; exception.

A. No, sir; the evidence would have to be gotten on the other side; we had only fourteen days.

Q. Have you ever sent any physician down there to examine the immigrants?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.
Objection overruled; exception.

A. No sir, for the reason that the decision is final.

Q. Mr. Cortes, the present practice, since January, 1905, has been to notify your company that a hearing would be granted within fourteen days?

77

A. Yes.

Q. Now, since that practice was instituted, has your company ever sent any physician to Ellis Island to examine any persons who were the subject of notices?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial.
Objection overruled; exception.

A. No, sir.

Q. Have you at any time, either before or after the issue of Circular 58, instructed the company's representative at Ellis Island to ascertain and report whether any special certificate had been filed with respect to any immigrants coming on your line? By special certificate I mean a certificate that the alien arriving on one of your steamships was afflicted with a dangerous contagious disease.

Mr. BEERS: Objected to on the same grounds.
Objection overruled; exception.

A. Yes, I have; I cannot remember the exact date.

Q. Approximately?

A. Well, since the fines were instituted for dangerous and contagious diseases, he was instructed to report such cases; he was not so instructed prior to the imposition of the first fine, covered by Exhibit 1; I cannot remember whether he was instructed prior to the imposition of the fine covered by Exhibit 2, but naturally I should think he would do so.

Redirect examination by Mr. BEERS:

It is my understanding that Section 9 of the Immigration Act of 1903 is the only section in that act relating to the imposition of fines in the case of immigrants afflicted with contagious diseases.

78

Q. Did you understand from these letters, Plaintiff's Exhibit 1 and Exhibit 2, that the demands of payment made in those

letters were made under the provisions of Section 9 of the Immigration Act?

A. It so states in one of them, I believe. The letter of October 8, 1903, states distinctly that under the law a clearance cannot be granted to the vessel at this port until the above fine has been paid.

I understood that the letter, Plaintiff's Exhibit 1, made a demand under the same section, Section 9.

Q. At your conversations with Mr. Hamilton, of which you have testified, did you and he discuss the subject of withholding of clearance?

A. That I cannot remember. We discussed wholly the injustice of the law, according to my idea.

Testimony of ROBERT S. CRATER, a witness called by defendant, taken by deposition on May 20, 1907, pursuant to stipulation of the parties.

Direct examination by Mr. DENISON:

My occupation is that of an immigrant inspector at Ellis Island. I have been in that position thirteen, I think fourteen, years,—thirteen positively. I have charge of the registry division of immigrants at Ellis Island. I was an immigrant inspector in 1903, boarding ships, inspecting first and second cabin passengers. I did not perform any duties on Ellis Island with reference to immigrants presented there, further than delivering the steerage passengers to Ellis Island for registration. I only had to do the checking off of names of first and second cabin passengers from the ship's manifest.

79 Q. Do you know the practice which existed in 1903 at Ellis Island with reference to checking the names of steerage passengers, when presented at Ellis Island?

Mr. BEERS: Objected to as immaterial and irrelevant, as to any of the issues involved in this action.

Objection overruled; exception.

A. The method of checking immigrants is done with a red ink pen, as each immigrant appears before each inspector; that check mark is made on the ship's manifest. The only names that are checked with red on the ship's manifest are those which appear before the inspector; the names of those who failed to pass the medical division would not be checked in red on the ship's manifest. That was the practice in 1903, is still the practice, and has been the practice ever since I have been in the service.

After the ship's manifest has been so marked, it is sent to the statistical division, where it is bound in book form and kept as a matter of record.

Q. Are the data in that division open to the inspection of representatives of steamship companies, if they care to see it?

Objected to as immaterial and irrelevant and incompetent; that the fact that these records may be open to inspection is not any evi-

dence of notice to those companies of the facts which may be contained in those records.

Objection overruled; exception.

A. No, sir, because the moment we get through with them we send it down to the information bureau, so that if any one calls for their friends the immigrants can be located; they are then sent back to me at night, and early the following morning are sent to the statistical division, where any of the landing agents can have access to them. No landing agent could have access to these records
80 while the inspector is checking the names on the manifest; it would be impossible for him to watch them, as there are twenty working at times; it would not be possible for the landing agent to stand beside me while I was checking the names on the manifest; we do not permit any one to stand at the desk while we are registering. The first thing we do with the manifest after it is checked is to send it down to the information bureau.

Q. And they are open to anybody's examination?

Mr. BEERS: Objected to on the same grounds.

Objection overruled; exception.

A. Yes, sir; it is open at my office for the inspection of any one until it is sent to the information bureau.

No cross-examination.

Testimony of WILLIAM F. McDOWELL, a witness called by the defendant, taken by deposition on May 20, 1907, pursuant to stipulation of the parties.

Direct examination by Mr. FRANKFURTER:

I am in charge of the executive work of the medical division of the immigration service at Ellis Island, and have been connected with the service about seventeen years, and have had charge of the executive office of the medical division for the same length of time. I am familiar with the whole course of procedure, as far as it relates to the medical division.

Q. Will you tell us just what is the course of procedure by which an alien comes into the medical division?

Mr. BEERS: I object, on the ground that this evidence is immaterial and irrelevant, in no way connected with the issues here,
81 and there is nothing to show that the steamship companies have any notice of what takes place.

Objection overruled; exception.

A. We rail off lines from one, two or three from the stairway in the entrance of the immigration building at Ellis Island. On these lines are stationed two doctors, one at the foot and one at the head of each line; the immigrants come up the stairway and are presented to them; the man at the head of the line examines for all defects other than diseases of the eye; the man at the end of the line examines for eye diseases; for any defects noted by either doctor, there is a special mark made on the immigrant's

clothing—a mark which is understood by the examiners—and they are turned one side into a compartment. Those that pass go on to the right and up to the registry division. After the ship has landed those that have been sent aside by the doctors are taken back into the medical examination room, and there examined by as many officers as are necessary to complete the work. I mean by medical officers those of the Marine Hospital Service. Some of them receive a notation where the disease or injury is of such a slight nature as not to call for a certificate; these notations are made on the manifest by the inspector, who takes cognizance of them in relation to other matters in connection with the immigrant. For instance, a man has a thumb off, and they note it; this would appear on the manifest, the inspector using his judgment as to whether this man should be landed or sent before the board of special inquiry. The others are still further examined, and if the disease is such as requires a
82 certificate and not hospital treatment, they are certified, and sent before the registry officer, who in turn sends them to the special inquiry division, and they go in the end to the board of special inquiry. Those that require medical treatment, their papers are made out and they are sent to the hospital, that is, to our hospital at Ellis Island. As soon as the patient is sent to the hospital, there are a number of papers made out in relation to each case,—the record of his admission, the notification to the steamship company that the man has been admitted, and the notice to the registry division that we have held in the hospital such a man; these entries are made in books. There is a blank form made out notifying the steamship company that the alien has been sent to the hospital, suffering from whatever disease is apparent, or in cases where the disease cannot be diagnosed at the moment, they say "For observation." That report is made and sent immediately on the passing of the immigrant to the hospital; that practice has been in vogue since 1891. The paper which you show me is a sample of the notification I speak of.

That is sent immediately, upon the immigrant's arrival at the medical division, to the agent of the steamship line in every case; we make a copy of this notification; that is sent out at the very day of the arrival of the aliens in the medical division.

The representatives of the steamship lines visit us very often with respect to the notifications. I am familiar with the representatives of the steamship lines; the representatives often call; I don't remember what they ask, particularly. Reports are made of the patients in the hospitals; five reports are made every morning of all patients admitted to the hospitals under the management of the immigration service—of all patients who have been admitted the day pre-
83 vious. One report is made to the statistician's office, one to the superintendent's office, one to the special inquiry division, one to the information bureau, and one to the central office and the registry division. That is a daily report; the daily report contains the name, age and occupation, ship from which the alien arrived, the name of the hospital to which the patient has been sent (as we have a number of hospitals) and also the disease from which he is suffering, or, as near as we can make it out, the diagnosis of the disease.

Q. As far as you know, is that report accessible to the representatives of the steamship lines?

Mr. BEERS: I object to this testimony, upon the ground that it is entirely immaterial, irrelevant and incompetent; that if the report is accessible, it is not any notice to the steamship line of its contents.

Objection overruled; exception.

A. I couldn't say whether they used it or not; it is accessible; it is a daily report. We also send notification to the companies in case of death. In case an alien is to be deported, the customary practice from the year 1903 down to and including the year 1905, so far as the medical division is concerned, is this: There is a certificate to be made out by the medical officers; this certificate comes to my office, where I check it up, compare it, and that certificate, if it is a case that is not excludable according to law, goes to the special inquiry division. There it is placed before the board, to act upon it and decide whether the case shall be landed or not in case of a mandatory certificate. By mandatory certificate I mean those that come under the statute as being excluded by law. The same course is pursued, with the exception of cases that are marked
84 "Special," or what we term "Special," being cases that come under the law for fines. In this case two certificates are made; one goes through the course before mentioned and the second goes to the chief clerk, who is the executive of the Commissioner, and that is as far as the medical division goes. When the case is finally to be deported, then the deporting physician sends a special requisition to my office, and I have the immigrant brought up and turned over to him and his receipt taken for. That is done on the same day that the alien is placed on board ship for deportation,—not the day that the ship sails, but the day before.

Q. During that whole period, from the time that a case actually gets into your division, until the time that a case has been deported, have the representatives of the steamship lines free access to your division for any information that they may desire?

Mr. BEERS: Objected to as incompetent, immaterial and irrelevant, and not proof of notice of anything to the plaintiff.

Objection overruled, exception.

A. Yes, sir, they have had that access in 1903, 1904 and 1905.

Q. Has the source of information been resorted to in the past by these representatives?

Mr. BEERS: Objected to as incompetent, immaterial and irrelevant, as it does not give any notice of anything to the plaintiff.

Objection overruled, exception.

A. Often—often during the years 1903, 1904 and 1905; every facility is accorded to the landing agents for information regarding medical cases. I do not understand that they have access to
85 the hospital; they could see the aliens during visiting hours; that privilege comes through the office of the hospital. Doctors representing the steamship lines occasionally have visited or

45

consulted with respect to aliens in our division in the past; if the steamship lines request that doctors be permitted to consult with the medical officers of the Government, such courtesy is always extended to medical men.

By Mr. DENISON:

The various practices and methods which I have testified to have existed at Ellis Island during and since 1903. I know the paper which you show me; it is the notification sent by my office to the steamship company, notifying them that an alien has been placed in a hospital from one of their ships; I mean it is a copy of the notification. The original was made in this style, this is evidently a copy; the copy is kept in the copy-book. The reference to the book and page in the corner means, copy-book No. 23 of such records; it refers to the book in which copies of such notices are recorded when they are sent to the steamship companies indicated.

Mr. DENISON: I offer in evidence this paper.

Mr. BEERS: I object to the admission of this paper in evidence, upon the ground that it is immaterial; irrelevant and incompetent, and no proof of any notice of an intention on the part of the Government to impose a fine under Section 9.

Objection overruled; exception.

Letters received in evidence and marked defendant's Exhibit B.

The letter was spread on the record in full, and is as follows:

86 DEF'T'S EX. B.

"Book 23. Duplicate Copy. Page 75.

N. Y. Form 121.

Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *Oct.* 2, 1903.

Agent White Star Line, 5 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving this day per steamship Germanic, and this day placed in hospital, for reasons given below:

Immigration Hosp.

1518 Paolo Necchi,—24—Italy—Eyes.

Respectfully,

GEO. W. STRONER,
Surgeon in Charge.
A. H. C."

The paper which you show me is a copy of a similar notice sent at the date indicated, with reference to one Van Geetson, among others.

Mr. DENISON: I offer this letter in evidence.

Mr. BEERS: I object, on the ground that it is incompetent, immaterial and irrelevant, and does not show any notice on the part of the Government of an intention to impose a fine.

Objection overruled; exception.

Letter received in evidence and marked Defendant's Exhibit C.

87 The letter was spread on the record, pursuant to stipulation, as follows:

DEF'T'S EX. C.

"Book 24. Copy. Page 32.

Surgeon's Notice that Passenger Has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service, Medical Division.

PORT OF NEW YORK, *December* 22, 1903.

Agent Red Star Line, 73 Broadway, New York, N. Y.

SIR: The following is a report of the aliens arriving December 22, 1903, per steamship Zeeland, and this day placed in hospital, for reasons given below:

Long Island College.

2526 Wytze Byker—49—Holland—Hydrocele
2527 Alfons Van Geetson—28—Belgium—Disease of eyes
2530 Petros Lagowy—29—Austria—
2531 Gyulo Horvath—25—Hungary—Abscess—Face

Respectfully,

GEO. W. STONER,
Surgeon in Charge.
C. YS."

I have known a Mr. Vogel, who was formerly an agent, I think, of the Cunard Line. I think he represented the Line which owns the "Zeeland"; he was an agent of the company; I have seen him many times; he was for years employed by the company at Ellis Island; he was a landing agent of that company in 1903.

88 I know a Mr. Bernstein; he is a landing agent of one of the companies; I think he represents the Cunard Line, I am not certain about that; I know he represents one of the companies.

Cross-examination by Mr. BEERS:

The notices in the form of the papers marked Defendant's Exhibits B and C are the only notices sent to the steamship companies as to the admission of an immigrant to the hospital by the medical division. There are also notices different from these sent by the medical department to steamship companies such as death notices; there are transfer notices, or in other words, when a patient is trans-

ferred from one hospital to another, the same patient, the notice is sent. There are no other notices sent by the medical department to the steamship companies other than notices like Exhibits B and C, and death notices and transfer notices. These are the only forms of notice ever given by the medical department to the steamship company.

I have no personal recollection of an immigrant Johann Klaara who arrived in July 1903 on the steamer "Arabic," or of the immigrant Paola Necchi who arrived on the "Germanic" in October 1903, or of Alphonse Van Geetson, who arrived on the "Zeeland" in December 1903, or the case of Dolly Nassif, who arrived on the "New York" in July, 1905, more than I have of the other 20,000 that I have handled since that time.

By Mr. DENISON:

I have testified in my direct examination as to the universal practice of my department with reference to all immigrants.

89 BYRON H. UHL, a witness examined on behalf of the defendant, by deposition, on May 20, 1907, pursuant to stipulation of the parties, testified as follows:

By Mr. FRANKFURTER:

My position is that of chief clerk of the Immigration Station at Ellis Island. I have been connected with the Immigration Service at Ellis Island for about fourteen years. The general function of the executive division at Ellis Island is the supervising of the general work of the station. I have the custody of all the records under my supervision. I am familiar with the course of procedure as to the right to examine records and documents.

Q. Will you tell us what reports are sent you from the medical division each day?

Mr. BEERS: I object to this evidence as immaterial and irrelevant and not within the issues of this action, which is to determine the legality of an alleged fine.

Objection overruled. Exception.

A. The report of admission to the hospital, the notices of aliens who are dangerously ill, notices of deaths, any special certificates that are rendered under Section 9; that is all I can think of, offhand. They are sent daily to the executive office. The various steamship lines have representatives stationed at Ellis Island, known as landing agents, and they have been at the Island ever since I have been there.

Q. Have these agents access to the reports just mentioned?

Mr. BEERS: I object to this evidence as incompetent, immaterial and irrelevant, and not being any notice of the facts con-
90 tained in the reports.

Objection overruled; exception.

A. They have. They may examine the hospital reports. The daily hospital reports are available for their inspection in the in-

formation division, where they may examine them. They do not come to our office.

A copy of the report sent from the hospital each day containing a list of the detained patients at length, is in the information division. They have access to it there. On such a report appears, if I remember rightly, the alien's name, age and sex, the ship's arrival, the date of arrival, the cause of admission to the hospital.

The paper which you show me refreshes my recollection. It is a sample of the report which we receive daily. The columns headed "A12," B13," C14" and so on indicate the manifest list and number of alien. I mean, the ship's manifest, on which the alien's name is marked.

Our division also has custody of the minutes of the special inquiry boards. In ordinary cases, they contain the testimony of the witness before the Board of Special Inquiry.

In an ordinary case where the alien was examined as to some alleged medical defect, the minutes would contain a copy of the doctor's certificate and the testimony of the alien, or any witness who appeared in his behalf, together with affidavits or other documents presented in his behalf. I mean, a copy of the certificate issued by the medical division, whatever doctor issued it, indicating the defect or disease.

Q. Are those minutes accessible to these landing agents?

Mr. BEERS: I object to this evidence as incompetent, im-
91 material and irrelevant and not being any notice of the facts set forth in the minutes.

Objection overruled; exception.

A. They are, upon request.

These minutes are usually transcribed within 24 hours, and either the landing agents, or any other interested person, has access to them at any time after that. Upon request, they have had such access during 1903 and from that date down. I want to say that this testimony refers to medical cases. If you have referred to any contract labor cases, they would not have access to the minutes. The testimony which I have given covers medical cases.

The greater part of all reports ultimately reaches the statistical division.

Q. Are the reports and documents in the statistical division accessible to representatives of the steamship lines?

Mr. BEERS: I object upon the ground that this evidence is immaterial and irrelevant and not evidence of notice to the steamship companies of the facts therein set forth.

Objection overruled; exception.

A. They are, upon request.

The ship's manifest eventually finds its way to the statistical division. That is accessible to landing agents, upon request. They are permitted to inspect these. That request is freely granted; so far as I know, it has never been refused.

In the ordinary instance, a special inquiry hearing is held in the case of an alien, who is detained for a medical defect, just as quickly

as the case can be reached. It depends upon the number of detentions taken up in their chronological order as quickly as possible.

By Mr. DENISON:

92 The testimony that I have given with reference to the general practice down there refers to the practice during and since 1903, as well as at present.

The steamship line which owns the steamship "Zeeland" has a landing agent that comes to Ellis Island. The steamship lines which own the steamships "New York", "Arabic" and "Germanic" have such an agent. These lines have had such agents during and since 1903 at Ellis Island.

Cross-examination by Mr. BEERS:

The questions on which the Boards of Special Inquiry pass are whether or not particular aliens should be allowed to land, that is, the Board of Special Inquiry decides whether or not a particular alien shall be allowed to land or shall be deported. That is all the Board of Special Inquiry does. In cases of diseases, which are enumerated in the Immigration Act, the certificate of the medical examiners to the facts that one of such diseases exists is conclusive on the Board, so far as the existence of that disease is concerned. If the medical examiner at Ellis Island certify that a certain alien is suffering with trachoma, the Board of Special Inquiry would be required, under the statute, to deport him. That is, if there was not any question as to his being an alien; that is right.

By Mr. DENISON:

To the best of my knowledge, there has never been any evidence before the Board of Special Inquiry whether or not the alien has the disease for which he is detained. I do not mean to say that the Board of Special Inquiry is prohibited by law from hearing any evidence as to whether the alien has the disease or not.

By Mr. BEERS:

In cases where the examining medical officer has certified
93 that an alien was suffering from trachoma, the special boards of inquiry at Ellis Island have never taken any other evidence on the subject of the existence of that disease other than the certificate of the examining surgeon.

By Mr. DENISON:

I do not know of any such case in which the Board of Special Inquiry has refused to consider any such evidence if it was offered. There have been cases in which the Board of Special Inquiry has reopened the case upon a revision of the medical officer's determination. That has happened when the alien remained in the hospital for a sufficient length of time for the doctor to be able to certify that a dangerous, contagious disease no longer existed. That was a case where there was a revision, so to speak, of the medical certificate.

By Mr. FRANKFURTER:

To my knowledge, such a revision has never taken place as a result, or in consequence, of a medical consultation with physicians of steamship lines, or physicians of the aliens, or any other physicians not connected with the Government service; never so far as I know.

By Mr. DENISON:

I do not know of any cases in which physicians have been offered to testify on behalf of the alien, or the Steamship Company, as to the condition of the alien; but there have been applications made and I think re-examinations allowed of the aliens; but so far as the steamship company is concerned, there have been only one or two instances, to my knowledge, where that has occurred, where they have consulted with officers of the medical division—the doctor of the ship
94 concerned—that has occurred only in a few instances, to my knowledge.

By Mr. BEERS:

Where there has been any revision of the action of the Special Board of Inquiry in case of an alien supposed to be suffering with a loathsome or dangerous, contagious disease, that revision has been based on a revised certificate from the examining medical officer or surgeon. Before the Special Board of Inquiry re-considered its action, the medical officers of the Bureau of Immigration revised their certificates with respect to the physical condition of the particular alien.

By Mr. DENISON:

I offer in evidence a copy of Department Circular No. 58.

Mr. BEERS: I object to the admission of this Circular, on the ground that it is incompetent, irrelevant and immaterial, in that on its face it shows that it does not afford the Steamship Company a reasonable opportunity to be heard, that it seeks to deprive the plaintiff of its property without due process of law, and is deprived of its right to a trial by a Court and jury,—all in violation of the plaintiff's rights under the United States Constitution.

Objection overruled: exception.

Paper admitted in evidence and marked "Defendant's Exhibit D", and, by stipulation, written into the record as follows:

95 "DEF'T'S EX. D."

"Procedure for Imposition of Fines on Account of Bringing Diseased Aliens to the United States.

Department of Commerce and Labor, Office of the Secretary, Washington.

Department Circular No. 58.

Bureau of Immigration.

JANUARY 25, 1905.

To Whom it May Concern:

As a means of enforcing the collection of any fine imposed under the provisions of Section 9 of the Immigration Act approved March 3, 1903, the said section directs the refusal of clearance papers to any vessel bringing any alien, diseased as described therein, to a port of the United States.

To avoid, on the one hand, the denial of reasonable time to the master, agent, owner, or consignee to show cause why such fine should not be imposed, and, on the other hand, the loss of the summary and effective means provided for the collection of such fines, the following regulations are hereby promulgated:

1. Medical Certificates.—The certificate of the medical examiner in the case of an alien afflicted with a loathsome or dangerous contagious disease shall state in terms whether, in his judgment, the 'existence of such disease might have been detected by means of a competent medical examination at the port of foreign embarkation.'

2. Notification.—Upon the receipt of a medical certificate in compliance with the preceding paragraph hereof, the commis-
96 sioner of immigration or inspector in charge at the port of arrival shall *at once* serve notice upon the master, agent, owner, or consignee of the vessel upon which such alien arrived, in the following form, printed blanks for that purpose to be procured from the Department, viz:

Department of Commerce and Labor, Immigration Service.

Office of —— ——,
Port of —— ——,
—— —, 190–.

To —— ——, —— of the steamship —— ——:
(Master, agent, owner, or consignee.)

In conformity with the requirements of Department Circular No. 58, you are hereby notified that a certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of Alien: ——— ——— Steamship: ——— ——— Disease: ——— ———

(Signature) ——— ———,
97 (Title) ——— ———.

Received the above notice ——— ——, 190–, at ——— ——— M.
(Witness) ——— ———. ——— ———.

11-1640.

The notification shall be prepared *in triplicate*, the original to be delivered by an employee of the Immigration Service at the office of the master, agent, owner, or consignee to whom it is addressed, said employee to witness the signature of the recipient. Receipt of service shall be indorsed upon the duplicate and triplicate, the duplicate to be returned to the office of the commissioner of immigration or inspector in charge and preserved as proof of delivery, and the triplicate to be delivered to the collector of customs, who will withhold clearance papers until the deposit is made.

3. Deposit.—The special deposit of $100, required to stay action for the period of fourteen days shall be made to the collector of customs for the district wherein the port of arrival is located within twenty-four hours after delivery of the above described notice, or, if said vessel sails sooner, before such sailing, and in default thereof all further proceedings shall be discontinued and the facts certified to the Bureau of Immigration by first mail, together with the medical certificate and duplicate notice, in order that such action may be taken as the evidence requires.

4. Stay of Action.—If, upon the expiration of twenty-four hours after service of the notice as provided in paragraph 2 of this circular, the deposit of $100, has been made in conformity with the said notice, the commissioner of immigration or inspector in charge shall suspend further proceedings until the submission of the
98 evidence offered to show why the said fine should not be imposed, or until the lapse of the specified period of fourteen days thereafter. When the said evidence has been submitted it shall be forwarded together with the certificate of the examining surgeon, to the Commissioner General of Immigration, for presentation to the Secretary of Commerce and Labor by the said commissioner or inspector in charge, who shall at the same time present his written

views as to whether the said fine should be imposed. If no evidence is submitted prior to the expiration of the said fourteen days, then said commissioner or inspector in charge shall report the case without such evidence, for action by the Secretary of Commerce and Labor.

5. Final Proceedings.—Upon the receipt of the decision of the Secretary of Commerce and Labor, a copy thereof shall be forwarded to the collector of customs, together with such data as may enable him to identify the special deposit made in that particular case. If the said decision imposes the fine, the $100, deposited as security shall be accounted for by the said collector in the usual manner, as a fine; if the decision holds that the penalty has not been incurred, the collector of customs shall return to the depositor the amount deposited as security.

11-1640.

V. H. METCALF, *Secretary.*"

By Mr. DENISON:

I offer in evidence a letter, dated April 5, 1907, addressed to Honorable H. L. Stimson, United States Attorney, New York, signed F. P. Sargent, Commissioner General.

Mr. BEERS: I object to the admission of this letter, upon the ground that the number of fines which have been imposed or collected, under Section 9, is utterly irrelevant to the issues in
99 this action.

Objection overruled; exception.

Letter received in evidence and marked "Defendant's Exhibit E," and, by stipulation, written into the record, as follows:

"DEF'T'S EX. E.

In answering refer to No. 51440.

DEPARTMENT OF COMMERCE AND LABOR.
BUREAU OF IMMIGRATION AND NATURALIZATION.
WASHINGTON, *April* 5, 1907.

Hon. H. L. Stimson, United States Attorney, S. D. N. Y., New York, N. Y.

SIR: I desire to acknowledge the receipt of your letter of the 29th ultimo, stating that you will be glad to receive any information which the Bureau can furnish as to rejections of diseased aliens prior to March 3, 1903, and also as to the number of $100. fines incurred under section 9 of the act approved on that date.

The figures have been compiled at the expense of considerable pains and are as follows:

Aliens Debarred on Account of Loathsome and Dangerous Contagious Diseases (All Ports) from July 1, 1897, to Feb. 28, 1903.

Fiscal year ended June 30,	1898	258
"	1899	348
Do.	1900	393
Do.	1901	309
Do.	1902	709
July 1, 1902, to February 28,	1903	1223

Aliens Debarred on Account of Loathsome and Dangerous Contagious Diseases (All Ports) from Mar. 1, 1903, to Feb. 28, 1907.

100

March 1, 1903, to June 30,	1903	550
Fiscal year ended June 30,	1904	1560
Do.	1905	2198
Do.	1906	2273
July 1, 1906, to Feb'y 28,	1907	2773

Amount of Fines Incurred Under Section 9, Act Approved Mar. 3, 1903, from that Date to February 28th, 1907.

Baltimore	$5,600	Boston	$7,500
Galveston	1,200	Jacksonville, Fla.	100
Key West, Fla.	800	New Orleans	1,960
New York	85,400	Philadelphia	7,300
Portland, Me.	300	Port Townsend, Wash.	1,000
San Francisco, Cal.	1,400		
Total			$112,500.00

The figures in the final statement, while approximate, are substantially correct, any slight discrepancy being insufficient to effect the integrity of the statement as a whole.

It is hoped that this data will be of assistance to you in connection with the cases now pending in your district.

Respectfully,

F. P. SARGENT,
Commissioner General."

Mr. DENISON: I offer in evidence the following papers:

(1) A letter, dated December 24, 1903, addressed to the Commissioner General of Immigration, Washington, D. C., signed Joseph Murray, Acting Commissioner.

(2) A letter, dated December 26, 1903, addressed to the Commissioner of Immigration at Ellis Island, and signed George B. Cortelyou, Secretary.

101 (3) A letter, dated December 28, 1903, addressed to the Collector of the Port, New York City, signed Joseph Murray, Acting Commissioner.

Mr. BEERS: I object to these papers being received in evidence as the basis of a fine, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard; these proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by a Court and jury, to which it is entitled under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits F I, F II, and F III.

"DEF'T'S EX. F I."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *December* 24, 1903.

Commissioner General of Immigration, Washington, D. C.

102 SIR: I herewith forward for such action as the Secretary of Commerce and Labor shall deem proper, copy of *medical certificate,* dated December 23, 1903, of Surgeon-in-charge showing that Alfons Van Geetson, who arrived December 22 by S. S. "Zeeland" (Red Star Line) was suffering from trachoma at the time of foreign embarkation, and that its existence could have been detected at such time.

Respectfully,
(Signed) JOSEPH MURRAY,
Acting Commissioner.

(Inclosure No. 5149.)

(Endorsement:) No. 19636. Dec. 24/03. Subject: To Commissioner General of Immigration transmitting doctor's certificate in case of Alfons Van Geetson."

"DEF'T'S EX. F II."

No. 43213.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *December* 26, 1903.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: In reply to your letter No. 19,636 of December 24, 1903, *and in view of the facts submitted therewith, it appears to my satisfaction* that the alien Alfons Van Geetson, a native of Belgium, ex S. S. "Zeeland" December 22, 1903, was afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected at said time.

103 I therefore direct that the Red Star Line, owners of said vessel, pay to the Collector of Customs of the District of New York, being the port at which said vessel arrived, the sum of $100. in conformity with Section 9 of the Act approved March 3, 1903, and that you certify this sum to said Collector for collection.

Respectfully,

GEO. B. CORTELYOU, *Secretary*,
Per S.

WVL

(Endorsement:) 19,636. Secretary of Commerce & Labor. Dec. 26, 1903. Imposing $100.00 fine case of Alfons Van Geetson. S. S. Zeeland Red Star Line. United States Immigration Service. Dec. 27 10-32 A. M. 1903. Chief Clerk's Office. Ellis Island, N. Y. H.

104 "DEF'T'S EX. F III."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *Dec.* 28, 1903.

Collector of the Port, New York City.

SIR: The Secretary of Commerce and Labor *has imposed upon the Red Star Line a fine of $100*, because he is satisfied, in accordance with certificate dated December 23, 1903, of U. S. Marine Hospital Surgeon in Charge that the alien Alfons Van Geetson, who arrived by S. S. "Zeeland" December 22, 1903, was afflicted at the time of foreign embarkation with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 43213 of December

26, 1903, I hereby certify to you this fine for collection in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,

(Signed) JOSEPH MURRAY,
Acting Commissioner.

VI.

(Blank Endorsement:) Department of Commerce and Labor. Immigration Service—Office of the Commissioner, New York, N. Y., —— —, 190–. —— ——, Commissioner. Subject: ——. No. of inclosures —.

Mr. DENISON: I offer in evidence the following:

(1) A paper, dated July 5, 1905, addressed to the American Line, owners of the Steamship, "New York."

(2) A paper marked "Verification of Landing", No. 19,636.

(3) A letter, dated July 6, 1905, addressed to Honorable Robert Watchorn, Commissioner of Immigration, and signed by the
105 Special Deputy Collector.

(4) A letter, dated July 7, 1905, addressed to Hon. F. P. Sargent, Commissioner General of Immigration, Washington, D. C., signed by the Commissioner of Immigration, New York.

(5) A letter, dated July 7, 1905, addressed to Hon. Robert Watchorn, Commissioner of Immigration, signed by N. N. Stranahan, Collector.

(6) A letter, dated July 8, 1905, addressed to the Hon. F. P. Sargent, Commissioner General of Immigration, at Washington, signed Robert Watchorn, Commissioner.

(7) A letter, dated July 8, 1905, addressed to the Commissioner of Immigration at Ellis Island, signed by Lawrence O. Murray, Assistant Secretary.

(8) A letter, dated July 11, 1905, addressed to the Hon. N. N. Stranahan, Collector of the Port of New York, and signed Lawrence O. Murray, and the certificate endorsed thereon, signed Robert Watchorn, Commissioner.

(9) A letter, dated July 12, 1905, addressed to the American Line, and signed Robert Watchorn, Commissioner.

Mr. BEERS: I object to these papers being received in evidence as a basis of a fine, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff, or the right to demand a deposit. They show on their face that the plaintiff has had no opportunity to be heard, and no notice of an intention to impose a fine before its property was demanded and taken. These proceedings cannot support the taking of plaintiff's property and the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of
106 the Constitution of the United States, and deprive it of its right to a trial by Court and jury under the Federal Constitution; under the provisions of the Federal Constitution a fine can

only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively Defendant's Exhibits G I, G II, G III, G IV, G V, G VI, G VII, G VIII and G IX.

107 "DEF'T'S EX. G I."

Form 507.

Notice of Liability for Fine on Account of Bringing Deceased Alien to the United States.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.)

OFFICE OF COMMISSIONER.
PORT OF ELLIS ISLAND, N. Y. H., *July* 5, 1905.
July 2, 1905.

To American Line, Owners of the Steamship "New York,"
(Master, agent, owner, or consignee),
9 Broadway, New York City:

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the collector of customs at this port, within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship:	Disease:
Dolly G. Nassif.	"New York."	Trachoma.

——— ———,
(Name.)
Commissioner.
(Official title.)

SMR.

108 Received the above notice July 5, 1905, at 3.55 P. M.
(Time.)
Per A. LEDERER.

Witness:
SAM'L YOUNG.

11-1641.

"DEF'T'S EX. G II."

19636.

Verification of Landing.

Department of Commerce and Labor, Immigration Service, Port of New York.

Name of alien: Nassif, Dolly. (Cherbourg.)
Arrived per S. S. New York. Line: American.
Date of arrival, July 2/05.
Date of application for relief or deportation:
Manifest group and number: 24-22.
Age: 11. Sex: Female. Married or single: Single.
Occupation:
Able to read: No. Able to write: No.
Citizen of Turkey.
Race: Syrian.
Final destination: Sioux City, Iowa, 1412—4 Ave.
Who paid passage? Father.
Money: ——.
Whether in United States before: No.
Health: Good.
Det. in Hospital.
(N. B.—If admitted, state whether on primary inspection, after temporary detention, or by Board.)
Remarks: Father, George Nassif, U. S. Cit.

WM. E. JUNKER,
Chief of Statistical Division.

Findings of Medical Division:
Final disposition:
11-1598.

109 "DEF'T'S EX. G III.

UNITED STATES CUSTOMS SERVICE.
PORT OF NEW YORK, *July* 6, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: Referring to notices of liability for fines under section 9, Act of March 3, 1903, in the case of the S. S. "Bluecher"; alien passenger Ludwig Wieczorck; S. S. "Umbera"; alien passenger John Stupadas; and S. S. "New York"; alien passengers—Elias Bashara; Dolly G. Nassif; and Joseph Rizk, which notices were received by the steamship companies on July 5, I have to state that the fines referred to therein have not been deposited with this office up to 4.30 P. M. this day, July 6th.

Respectfully,
(Signed) ——— ———,
Special Deputy Collector.

Copy.

"DEF'T'S EX. G IV."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 7, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to enclose for your consideration, two certificates dated July 3, 1903, by the P. H. and M. H. Surgeon in Charge here, to the effect that Elias Bashasa and Dolly G. Nassif, ex S. S. "New York," July 2, 1905, have trachoma, a dangerous, con-
110 tagious disease; that said aliens were afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time.

I also inclose duplicate notices served on the line at 3.55 P. M. July 5, 1905, in accordance with Department Circular 58. The Collector informs me in a letter dated the 6th instant, that the $200. deposit required by said circular to be made as a condition precedent to the line's right to submit additional evidence, has not been made within the prescribed period of 24 hours.

I therefore recommend that the fine of $100. in each case be imposed.

Respectfully,

——— ———,
Commissioner.

SMR.
Incl. 3936.

(Blank endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York N. Y., ——— ———, 190–. ——— ———, Commissioner. Subject: ———. No. of Inclosures —.

111 "DEF'T'S EX. G V."

EB.

Office of the Collector.

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *July* 7, 1905.

Hon. Robert Watchorn, Commissioner of Immigration:

SIR: I have to advise you of the deposit with this office to-day of the sum of three hundred dollars by the American Line, owners of the S. S. "New York": for which sum the vessel has become liable under section 9, Act of March 3, 1903, in the case of the alien pas-

sengers, Elias Bashara; Joseph Rizk; and Dolly G. Nassif; also of the deposit of the sum of one hundred dollars in the case of the S. S. "Umbria"; alien passenger, John Stupadas.

Respectfully,

N. N. STRANAHAN, *Collector.*
J. E. H.

(Endorsement:) 19636. N. Y. Jul- 7, 1905. Collector of Customs Advises deposits made in case Elias Bashara, Jos. Rizk & Dolly G. Nassif. S/S New York & John Stupadas S/S Umbria. Referred to Law Clerk (E. R.). Delivered 1.05 M A Jul- 8 8.53 A. M.

112 "DEF'T'S EX. G VI."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 8, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to refer to my letters No. 19,636 of yesterday, transmitting medical certificates in the cases of John Stupadas, ex S. S. "Umbria," Elias Bashara and Dolly G. Nassif, ex S. S. "New York." July 2, 1906, reporting that the Collector had informed me that the deposit required by Circular No. 58, had not been made within the prescribed period of 24 hours from service of notice on the line.

I have this morning received a further letter from the Collector, stating that the deposit of $100. was made yesterday by the Cunard Line and $200. by the American Line on account of these cases.

Possibly in view of this you may desire to allow fourteen days within which to file additional evidence.

Respectfully,
(Signed) ROBERT WATCHORN,
Commissioner.

SMR

(Blank Endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York, N. Y., ——— —, 190–. ——— ———, Commissioner. Subject: ———. No. of inclosures —.

113 "DEF'T'S EX. G VII."

No. 48969.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19,636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex S. S. "New York" July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

Respectfully,

LAWRENCE O. MURRAY,
Assistant Secretary.

F. W.

WVL.

(Endorsed:) 19636. Secretary of Commerce and Labor. Jul- 8, 1905. Imp. $200. fine case of Elias Bachasa & Dolly G. Nassif ex New York, July 2, 1905. Referred to Law Clerk (E. I.). Delivered 12.25 M A Jul- 10 8.31 A. M.

114 "DEF'T'S EX. G VIII."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 11, 1905.

Hon. N. N. Stranahan, Collector, Port of New York, New York City.

SIR: I am in receipt of a letter from the Assistant Secretary of Commerce & Labor, of which the following is a copy:

No. 48969.

WASHINGTON, *July* 8, 1905.

Commissioner of Immigration, Ellis Island, N. Y.

SIR: The Department acknowledges receipt of your letter of 7th instant, No. 19,636, with which was transmitted, in conformity with the requirements of Department Circular No. 58, the record in relation to the aliens Elias Bachasa and Dolly G. Nassif, ex S. S. "New York," July 2, 1905.

As a result of the evidence presented, and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above mentioned aliens were afflicted with trachoma, a dangerous contagious disease, at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at that time.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which said vessel arrived, the sum of $200., as provided by Section 9 of the Act approved March 3, 1903, and that you so certify to said Collector in order that said amount may be collected and immediately covered into the Treasury as an immigration fine.

115

Respectfully,

(Signed) LAWRENCE O. MURRAY,
Assistant Secretary.

WVL.

Pursuant to the foregoing direction I hereby certify to you the sum of $200. for collection from the American Line, owners of the S. S. "New York."

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

(Endorsement in blank same as on Ex. G VI.)

"DEF'T'S EX. G IX."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *July* 12, 1905.

American Line, 9 Broadway, New York City.

SIRS: After careful consideration of all the facts relating to the aliens Elias Bashara and Dolly G. Nassif, who arrived on the steamship "New York" July 2, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100. has been imposed in each case, and the Collector of the Port has been so informed. This action has been

taken in conformity with Section 9 of the Act approved March 3, 1903.

This notice is sent for your information.

Respectfully,

(Signed) ROBERT WATCHORN,
Commissioner.

G.

(Endorsed in blank the same as Ex. G VI.)

116 Mr. DENISON: I offer in evidence the following papers:

1. A letter dated July 10, 1903, addressed to the Commissioner General of Immigration, Washington, D. C. signed "William Williams, Commissioner."

2. A letter dated July 13, 1903, addressed to the Collector of the Port, New York City, signed "William Williams, Commissioner."

3. A letter dated July 11, 1903, addressed to the Commissioner of Immigration at Ellis Island, and signed, "George B. Cortelyou, Secretary."

Mr. BEERS: I object to these papers being received in evidence, upon the ground that they are entirely incompetent, irrelevant and immaterial, to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard. These proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and to deprive it of its rights to a trial by a Court and jury, to which it is entitled under the Federal Constitution. Under the provisions of the Federal Constitution, a fine can only be imposed by the judiciary, and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits H-1, H-2 and H-3.

117 "DEF'T'S EX. H I."

No. 17837.

Department of Commerce and Labor, Immigration Service.

OFFICE OF COMMISSIONER OF IMMIGRATION,
NEW YORK, N. Y., *July* 10, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: Referring to Section 9 of the new law, I enclose a certificate signed by Dr. Geo. W. Stoner, Surgeon in charge of our Medical Division, showing that Johann Klaara, a native of Russia, who arrived July 5, 1903, on the S. S. "Arabic," of the White Star Line, had trachoma at the time of embarkation. I am satisfied that the

existence of such disease might have been detected by means of a competent medical examination at such time. I recommend that the Secretary of Commerce and Labor impose a fine of $100.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

(Inclosure U.)
(Endorsed:) 19636. July 10.

118 "DEF'T'S EX. H H."

No. 17837.

JULY 13, 1903.

Collector of the Port, New York City.

SIR: *The Secretary of Commerce and Labor has imposed upon the White Star Line a fine of $100.*, because he *is satisfied* that the alien Johann Klaara, a native of Russia, who arrived July 5, 1903, by S. S. "Arabic" of that line, was at the time of embarkation afflicted with trachoma, a dangerous contagious disease. Pursuant to Department letter No. 39,486 of July 11, 1903, I hereby certify to you this fine for collection, in accordance with Section 9 of the act of March 3, 1903.

Respectfully,

——— ———,
Commissioner.

JAM.

"DEF'T'S EX. H III."

No. 39486.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *July* 11, 1903.

Commissioner of Immigration, Ellis Island, N. Y. H.

MY DEAR SIR: The Department is in receipt of your letter of the 10th instant, No. 17,837, inclosing certificate of a Public Health and Marine Hospital Surgeon in the case of the alien Johann Klaara, aged 30, a native of Russia, ex. S. S. "Arabic" July 5, 1903, from which certificate it would appear that said alien was afflicted with trachoma at the time of embarkation.

119 You are, therefore, instructed to impose, and certify to the Collector of Customs for collection, a fine of $100.00 in the case of this alien, in conformity with section 9 of the Act approved March 3, 1903.

Very truly yours,

GEO. B. CORTELYOU, *Secretary.*

(Endorsement:) 19636. Treas. Secretary of Commerce & labor. July 11/03. Imposing fine $100.00. Case Johann Klaara. Ex. "Arabic" 7/5/03. U. S. Immigration Service. Jul- 12 10:51 A. M. 1903. Executive Office, Ellis Island, N. Y. H.

Mr. DENISON: I offer in evidence the following papers:

1. A letter dated October 5, 1903, addressed to the Commissioner General of Immigration, Washington, D. C., and signed "William Williams, Commissioner."

2. A letter dated October 6, 1903, addressed to the Commissioner of Immigration at Ellis Island, signed "George B. Cortelyou, Secretary."

3. A letter dated October 8, 1903, addressed to the Collector of the Port, New York City, signed "William Williams, Commissioner."

Mr. BEERS: I object to these papers being received in evidence, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff. They show on their face that the plaintiff has had no notice of an intention to impose the alleged fine, and has had no opportunity to be heard. These proceedings cannot support the imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its
120 rights under the Fifth Amendment of the Constitution of the United States, and to deprive it of its rights to a trial by a court and jury, to which it is entitled under the Federal Constitution. Under the provisions of the Federal Constitution, a fine can only be imposed by the judiciary, and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively, Defendant's Exhibits I-1, I-2, and I-3.

DEF'T'S EX. I I."

No. 19636.

OCTOBER 5, 1903.

Commissioner-General of Immigration, Washington, D. C.

SIR: I submit for such action as the Secretary of Commerce and Labor may deem proper, a copy of medical certificate dated October 3, 1903, issued by Surgeon-in-Charge, showing that Paolo Necchi who arrived by S. S. "Germanic" of White Star Line (list D, No. 18) on October 2, 1903, was suffering from trachoma, and that such disease could have been detected at the time of embarkation.

Respectfully,

(Signed) WM. WILLIAMS,
Commissioner.

(Enclosure 2294.)
JM.

(Endorsed:) No. 19636. Oct. 5. —— —, 190–. —— ——. Subject ——.

121 "DEF'T'S EX. I II."

No. 41782.

Department of Commerce and Labor.

OFFICE OF THE SECRETARY,
WASHINGTON, *Oct.* 6, 1903.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: In reply to your letter of the 5th instant, No. 19,636, and in view of the facts submitted therewith, it would appear that the alien Paolo Necchi, a native of Italy, ex. s/s "Germanic," Oct. 2, 1903, was afflicted with trachoma at the time of embarkation.

You are therefore instructed to impose and certify to the Collector of Customs, for collection from the White Star Line, a fine of $100.00 in conformity with section 9 of the Act approved March 3, 1903.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*
Per R. S.

(Endorsement:) 19636. Oct. 6, 1903. Secretary of Commerce & Labor. Author. imposition of $100.00 fine against White Star Line case of Paolo Necchi. U. S. Immigration Service. Oct. 8 8:43 A. M. 1903. Executive Office, Ellis Island, N. Y. H. 20210.

122 "DEF'T'S EX. I III."

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y.

Collector of the Port, New York City.

SIR: Pursuant to the direction of the Secretary of Commerce and Labor, *I have imposed* upon the White Star Line a fine of $100. because he is satisfied that the alien Paolo Necchi, ex. S. S. "Germanic" October 2, 1903, was afflicted with trachoma, a dangerous, contagious disease, at the time of foreign embarkation, as certified on October 3, 1903, by the Surgeon-in-Charge of our Medical Division; and pursuant to Department letter No. 41,782 of October 6, 1903, I hereby certify to you this fine for collection, in conformity with Section 9 of the Act approved March 3, 1903.

Respectfully,
(Signed) WM. WILLIAMS,
Commissioner.

VL.

(Blank endorsement:) Department of Commerce and Labor, Immigration Service. Office of the Commissioner, New York, N. Y., ——— ———, 190–. ——— ———, Commissioner. Subject: ———. No. of Inclosures —.

Mr. DENISON: Does the plaintiff admit that after July 11, 1905, the defendant paid over into the treasury of the United States the money referred to in the 17th cause of action of the International Mercantile Marine Company's case?

Mr. BEERS: Without admitting the materiality of the evi-
123 dence as to such payment, the plaintiff admits the fact of the payment.

The testimony of ARTHUR LEDERER, a witness for the plaintiff, taken by deposition on May 22, 1907, was read in evidence, pursuant to stipulation of the parties.

Direct examination by Mr. BEERS:

I was connected with the International Mercantile Marine Company in the month of December, 1903, and in the month of July, 1905. I had been connected with that company for eighteen years, since its organization. I am not sure of the exact date, but when the International Mercantile Marine Company succeeded the International Navigation Company, I was taken over as one of the old officers, holding the same position with the new company. The International Mercantile Marine Company was organized prior to March 1, 1903. In December, 1903, and in July, 1905, I was manager of the passenger department of the International Mercantile Marine Company. I am not now connected with the company; I resigned on April 23, 1906. From the date of the organization of the International Mercantile Marine Company, down to the date of my resignation in 1906, I held the office of manager of the passenger department; as such manager I had charge of matters which arose in connection with the immigration laws.

The Red Star Line is one of the lines controlled by the International Mercantile Marine Company; The American Line is another line under the control of that company. My duties as manager of the passenger department included passengers by the ships of both the Red Star and American Lines, from the date of the organization of the International Mercantile Marine Company down to the date of my resignation. If any letters or notices were sent from any official of the United States Government to either the Red Star or the American Lines, they would come to me.

124 Q. I show you a letter dated December 29, 1903, to the Master of the Steamship "Zeeland," of the Red Star Line, signed "F. E. Hamilton, Solicitor for the Collector," and ask whether that was a letter which came to you on or about December 29, 1903, (handing witness letter).

A. Yes, sir.

Mr. BEERS: I offer the letter in evidence.

Letter is received in evidence and marked "Plaintiff's Exhibit 3."

By stipulation the letter was entered in full in the record, as follows:

"United States Customs Service, Port of New York.

Office of the Collector, Law Division, Solicitor to the Collector.

DEC. 29, 1903.

Master S. S. "Zeeland," c/o Red Star Line, Empire Building, Manhattan.

SIR: The Secretary of Commerce & Labor has imposed a fine of one hundred dollars upon the S/S "Zeeland" because it is satisfied that the alien Alfons Van Geetson, who arrived on the 22nd instant, was at the time of foreign embarkation afflicted with trachoma, a dangerous contagious disease.

Under the law the vessel cannot clear from this port until this fine is paid.

Respectfully,

F. E. HAMILTON,
Solicitor to the Collector.

3d class $100
Cash ticket JF.
Man. 326.
Ticket No. 32773.

Cashier's office
Paid
Jan. 27, 1904
Custom House N. Y."

125 Neither the Red Star Line nor the International Mercantile Marine Company received any notice from any Government official to the effect that a fine was demanded in the case of Alfons Van Geetson before this letter, Plaintiff's Exhibit 3, was received by the company; that was not customary; this was the only notice of the kind, first and last; this letter was the first notice of any description received by the company in respect to the imposition of any fine in the case of Van Geetson. The company paid the sum of $100, demanded in this letter (Plaintiff's Exhibit 3); it made the payment because they did not feel like holding up the ship; passengers were booked and cargoes were to be taken care of. It would simply have meant the clearance of the ship not being given. The refusal of clearance would have had the effect of putting the business of the Red Star Line to a standstill; it would put us out of business; every hour of the day would have meant so much money; a question of a hundred or several hundred dollars could not have prevented us from paying them rather than have the ship held up.

Q. I show you a notice dated July 5, 1905, directed to the Ameri-

can Line, owners of the Steamship "New York," and signed by Robert Watchorn, Commissioner, and ask whether this paper was received by the International Mercantile Marine Company on or about this date, July 5, 1905.

A. Yes, sir; it was received by me.

Mr. BEERS: I offer this letter in evidence.

Letter received in evidence and marked "Plaintiff's Exhibit 4."

By stipulation of the parties the letter was entered in the record in full, as follows:

126 "PL'FF'S EX. 4.

Original.

Notice of Liability for Fine on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.) 7/6

OFFICE OF COMMISSIONER,
PORT OF ELLIS ISLAND, N. Y. H., *July* 5, 1905.

Imm'ig Fine
127 W.
July 2, 1905.

To American Line, Owners of the Steamship "New York"
(Master, Agent, Owner, or consignee.)
9 Broadway, New York City.

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the examining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the Collector of Customs at this port within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred

dollars as security for the payment of the said fine, should it be imposed.

Name of Alien:	Steamship:	Disease:
Dolly G. Nassif.	"New York" 127.	Trachoma.

(International Mercantile Marine Company, Jul- 7, 1905, Paid.)

ROBERT WATCHORN,
(Name)
Commissioner.
(Official Title)

24-22
Paid
Jul- 7, 1905.

N.

Protested
M. J. CARTER.

SMR.

127 Received the above notice July 5", 1905, at 3:50.
(Time.)
Per A. LEDERER."

Witness:
SAMUEL YOUNG.

11-1641.

This notice was the first notice of any description received by the owners of the Steamship "New York" with respect to the exaction of any sum of money from the company by reason of the bringing in of the alien Dolly G. Nassif; this was the only notice received by the company in respect to the demand in the case of this alien. The sum demanded in this case was paid to the Collector of this port by the owners of the Steamship "New York." It was paid for the same reason as stated in the previous case, because we did not care to have the ship held up. Clearance would have been held up unless we had paid the amount of the fine imposed upon us. It would have entailed serious losses upon the business of the company if clearance had been refused to the steamship "New York," as I have indicated in my previous testimony.

Q. Were these sums demanded by these (indicating Plaintiff's Exhibits 3 and 4) paid by the company willingly?

A. Well, there was no alternative. The payment of the $100 which was demanded by this notice, (Plaintiff's Exhibit 4) was made through our Custom House brokers; they were Perry & Ryer.

Mr. BEERS: I offer in evidence a copy of such letter.

Mr. DENISON: Defendant admits that the paper offered in evidence is a true copy of a paper the original of which was filed with the Collector of Customs on or about July 7, 1905.

Letter received in evidence and marked Plaintiff's Exhibit 5.
128 By stipulation of the parties, the letter was entered in the record in full, as follows:

"PL'FF'S EX. 5.

Copy.

John C. Ryer. Edward T. Coons.

Cable Address
"Architrave"
Perry, Ryer & Co.,
Customs & Insurance Brokers and Forwarders.

Boston Office: Stone & Downer Co., 131 State Street.

Phil. Off.: E. H. Bailey & Co., 406 Library St.

Import Agents N. Y. O. & W. R. R., Ontario Dispatch and Ontario & Michigan Central Line.

Correspondents in all parts of the World. 66, 68 and 70 Beaver St. Coffee Exchange.
Telephone, 392 Broad.

NEW YORK, *July* 7, 1905.

Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $300. imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States the following passengers:
Dolly G. Nassif,
Elias Bashara,
Joseph Risk
on the Steamship "New York" arrived July 2nd, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

INTERNATIONAL MERCANTILE MARINE CO.,
JOHN C. RYER, *Att'y.*"

Cross-examination by Mr. DENISON:

It was a part of my duty, as manager of the passenger department, to deal with questions affecting immigrants; that was in my charge for about thirty-three years. In the conduct of that branch of my duty it was absolutely my practice to familiarize myself with
129 the immigration laws. I familiarized myself with such laws as soon as they became available, and in particular I fami-

liarized myself with the Act of March 3, 1903; I was familiar with the provisions of that act shortly after its passage.

(The witness being shown Defendant's Exhibit C)—I have received papers similar in form to that which you show me; they were regularly received by my company.

My company is the owner of the Red Star Line, of which the Steamship "Zeeland" is a part. In December, 1903, the office was at 73 Broadway.

By Mr. BEERS:

During the years 1903 and 1905, the Red Star Line and American Line had landing agents at Ellis Island, we had an agent and an assistant; when I say that, I refer to the American and Red Star Lines; the American and Red Star Lines were associated in business prior to the formation of the International Mercantile Marine Company. The duties of the landing agent at Ellis Island were to accompany the immigrants and their baggage from the steamer's pier to Ellis Island, seeing that none of them escaped, delivering them any letters or telegrams addressed to them, paying them any moneys addressed to them, attending to their forwarding to destination by rail or otherwise. These were their chief duties; it is not supposed to be the duty of the landing agent to receive communications addressed to the company by the Government on the company's behalf; the landing agent was to attend to the speedy departure of the immigrants towards their destination; the landing agent was not authorized to represent the company in matters of business other than such as related to the departure of passengers from Ellis Island, and the delivery of mail, railroad tickets, telegrams, etc., addressed to them.

Cross-examination by Mr. DENISON:

130 When I instructed him to do so, or when I was interested particularly in some case or cases, the landing agent would try to ascertain the cases of my immigrants who were sent to the hospital at Ellis Island. The notices such as you have shown me were frequently handed to him, and passed over to me or kept by him. Very often I did not get to see any of these, because they were immaterial, they were not of sufficient importance for me to look after them. I determined whether they were of sufficient importance; these are all matters of form; I should say that these notices of which you have shown me a copy are to conform with some rules or regulations at Ellis Island; they are of no weight or consequence to the manager of the passenger department, whose duties are very varied. I never took any note of papers of that character (Defendant's Exhibit C) until they had been delivered to me in person, either by the personal messenger of the Commissioner of Immigration or the Collector of the Port; then I knew it was a matter of importance.

Q. I show you a paper marked Defendant's Exhibit E IX, and ask you whether or not you can say you have received the original thereof.

A. I may have received such a notice; it is very likely I received the original of which this is a copy.

Q. Now, when you received Plaintiff's Exhibit 4, or after you received that exhibit, did you, or anybody on behalf of the company, ask for any hearing upon the subject of that letter?

Mr. BEERS: I object to the question as immaterial, irrelevant and incompetent, upon the ground that there is no duty resting upon the steamship company to ask for a hearing. The letter does not offer a hearing.

Objection overruled; exception.

A. I do not think so.

131 Q. Did you offer to submit to the Government authorities any evidence bearing upon the subject referred to in that letter.

Same objection; same ruling; exception.

A. No.

Q. Did you ask for any extension of the time limited in that notice.—Plaintiff's Exhibit 4?

Same objection; same ruling; exception.

A. No.

By Mr. BEERS:

Q. In response to the question by the District Attorney, you have testified that certain notices may have been sent to the company by the landing agents of the company at Ellis Island;—did you refer to notices of the same character as Defendant's Exhibit C?

A. Yes, sir.

The Company's landing agent has no power to represent the company in matters relating to impositions of fines on the Company by the United States Government, or in relation to exactions of any description by the Government. He has no authority to receive communications from any Government official in reference to fines or exactions.

By Mr. DENISON:

Q. Your company reimburses the Government for the hospital expenses of your immigrants at Ellis Island, does it not?

Mr. BEERS: Objected to as irrelevant.

Objection overruled; exception.

A. Yes, sir.

Q. And periodically you received bills from the Government for such expenses?

Same objection; same ruling; exception.

A. Yes, sir.

Q. How did you check those bills?

132 Same objection; same ruling; exception.

A. We look up the passenger manifest, first to see the name of the passenger appears on it, and whether it shows the date of arrival, and if the date of arrival, which means practically the date of admission to the hospital, correspond, and the date of his deportation, if deported, corresponds with the notice of the day of his dismissal from the hospital, this gives us the period of hospital detention, thereby enabling us to tell about whether it was right or not. We do not take any means at all to test the question whether any such alien was in fact sent to the hospital; we consider those matters *bona fide*.

Q. But you have received some reports, in the form of Defendant's Exhibit C?

Same objection; same ruling; exception.

A. Yes, sir, that has been true during and since 1903.

Mr. DENISON: I offer in evidence the letter dated July 2, 1905, addressed to the Agent American Line signed "Geo. W. Stoner".

Mr. BEERS: I object to the admission of this paper in evidence on the ground that it is incompetent, irrelevant and immaterial and does not inform the plaintiff of any intention of imposing a fine.

Objection overruled; exception.

Paper received in evidence marked "Defendant's Exhibit K". Paper is set forth in the record in full by stipulation as follows:

"D'FD'T'S EX. K. May 28-07.

(Copy.) D.

Surgeon's Notice that Passenger has Been Sent to Hospital.

Department of Commerce and Labor, Immigration Service.

Book No. 31. Medical Division.

PORT OF NEW YORK, *July* 2, 1905.

Agent American Line, 9 Broadway, New York, N. Y.

SIR: The following is a report of aliens arriving July 2,
133 1905, per Steamship New York and this day placed in hospital, for reasons given below:

Immigrant.

18—Matti Isakkila 24 Russia —Disease of eyes.
19—Dally G. Nassif 11 Turkey— " " "

Long Island College.

20—Assif Abraham 11 Turkey—Disease of eyes.
21—Giacomo Cossolo 29 Italy — " " "
22—George Assir 20 Turkey— " " "
23—Michael Assir 16 " — " " "

Respectfully,
(Signed) GEO. W. STONER,
Surgeon in Charge.
Y. S."

Plaintiff without admitting the materiality, relevancy or competency of the documents admits that a notice similar in form to the Defendant's Ex. K, this date, was issued by the Surgeon in charge at the Port of New York of the Immigration service in the case of the alien Johann Klaara brought by the Steamship "Arabic" on or about July 5, 1903; and that the said notice was forwarded to the plaintiff and received by it on or about the date of the arrival of the said alien.

The Testimony of FRANCIS E. HAMILTON, a witness for the plaintiff, taken by deposition on May 29, 1907, was read in evidence, pursuant to stipulation of the parties.

Direct examination by Mr. BEERS:

I am the solicitor to the Collector of this port, and have been in that position for five years past. I am familiar with the immigration law passed in March, 1903, as far as it relates to the Port of New York. I am familiar with the methods adopted by the U. S. Government for the enforcement of that law, so far as they relate to the Port of New York and the law division of the Collector's
134 office. So far as the Collector of the Port of New York has any duty to perform under the terms of that Immigration Act, or with respect to immigration, I am familiar with the method in which he performs that duty; I am adviser in respect to any question which may come up. I am familiar with the provisions of the Immigration Act of 1903. The rule adopted by the Collector's Office in collecting fines under Section 9 was as follows: Notice was sent to the steamship company bringing in a person, upon receipt of advice from the immigration authorities that any alien was afflicted with a loathsome or dangerous contagious disease, which notice was to the effect that the steamship company was liable to a fine of $100 for having so brought in, in violation of Section 9, such alien. I think this was the rule adopted before the issuance of Circular 58, and was the rule which was first adopted in the Collector's office since the law of 1903 went into effect. The first notice which I speak of as having been sent to the steamship companies was signed by me personally.

Q. I show you a letter, Plaintiff's Exhibit 3, and ask you if that letter is one of such notices as you have testified to as having been issued prior to the promulgation of Circular 58.

A. Yes, sir. When such a notice as the one you have shown me has been issued to steamship companies, I think that the Collector has never failed to collect the sum demanded; I know he has not; he has never waived or eliminated the fine or exaction in any case. Representatives of the steamship companies protested to me against these exactions under Section 9 prior to the issuance of Circular 58, several times, verbally. I think that in every case when such a protest or objection was made, I stated that the fine would not be eliminated, but I know it never was eliminated; that was the uni-
135 form rule of the Collector's office. This notice which you have shown me was issued in accordance with the rule which was adopted by the Collector prior to the promulgation of Circular 58.

In every case the sum mentioned was demanded as an exaction for the issuance of clearance. Quite a large number of notices similar in character to the notice Plaintiff's Exhibit 3 were signed by me and sent to steamship companies, between the time when the Immigration Act of 1903 went into effect and the date of the issuance of Circular 58—some hundreds, as I recall them. I am familiar with the provisions of Circular 58 of the Department of Commerce and Labor. I am familiar with the rule which was adopted and pursued by the Collector of the Port of New York in respect to the collection of exactions under Section 9 of the Immigration Act after Circular 58 was issued. Subsequent to the issuance of Circular 58, notices in the form of Plaintiff's Exhibit 4, or exact duplicates thereof, were sent by the Commissioner of Immigration at this port to the Collector, in cases where payment was demanded under Section 9; one went to the steamship company; I think they were both originals. When a notice in form like Plaintiff's Exhibit 4 was received by the Collector, in every case he exacted a payment or a deposit of $100 before issuing clearance to the vessel named in the notice. In each case he exacted the money, whatever it was. I understand that that was the uniform custom of the Collector, from the time of the issuance of Circular 58 to now. These notices from the Commissioner of Immigration of this Port, like Plaintiff's Exhibit 4, came to me personally. A series of protests against the exactions under these notices were made to the Collector, but in every case, notwithstanding any protest or objection, the sum specified was collected before clearance was issued; it was never waived or eliminated. As many deposits were taken
136 after the issuance of Circular 58 as there were notices; there was a large number of notices; there were several hundred, I think.

Cross-examination by Mr. DENISON:

Q. After the promulgation of Circular 58 (Defendant's Exhibit D) was any change made by the steamship companies, or any of them, in their practice with reference to submitting evidence on the questions involved?

Mr. BEERS: Objected to as incompetent, irrelevant and immaterial, upon the ground that whatever the companies may have done pertaining to such notices has nothing to do with the legality of the exaction which had theretofore been made; that in any event the practice of submitting evidence within fourteen days did not afford the plaintiff a reasonable opportunity to be heard.

Objection overruled; exception.

A. Absolutely none, so far as my knowledge goes.

Q. So far as you know, was any evidence ever submitted by any steamship company?

Same objection; same ruling; exception.

A. Never have known of any evidence being submitted, either before or after the promulgation of Circular 58. There never was any request made through the Collector's office, so far as I know, for an

extension of the fourteen days' limit in the notices sent after the issuance of Circular 58.

Q. When deposits were made by the steamship companies, pursuant to the notice sent out under Circular 58 (a sample of which notice is in evidence as Plaintiff's Exhibit 4) what disposition was made by the Collector of that money?

Same objection; same ruling; exception.

A. It was held for the fourteen days allowed by that notice, subject to any further order of the Secretary of Commerce and
137 Labor. It was held in a special fund, by an official of the Custom House, until the expiration of the fourteen days, and then, no further directions being received, it was passed to the credit of "Fines, penalties and forfeitures." The covering of the amount of the deposit in the treasury would be made upon and after the receipt of a letter such as Defendant's Exhibit G VIII in every case. The money was then covered in a special account of "Fines, penalties and forfeitures." Prior to that time, it was held in a special account as a deposit. In case the Secretary of the Treasury did not finally impose the penalty, the amount deposited would be returned to the depositors.

Q. I note in Plaintiff's Exhibit 4 that it is required as a condition of clearance that the deposit be made within 24 hours after the receipt of the notice in the form of that exhibit.—Will you state whether or not in practice that limitation was strictly enforced?

Same objection; same ruling; exception.

A. It was not strictly enforced; under certain circumstances the time was extended, sometimes to 48, and I think even to 60 hours.

By Mr. BEERS:

Q. Mr. Hamilton, you have testified that under the terms of Circular 58, various sums, which you call "deposits," were made with the Collector of the Port;—were any of these sums ever repaid to the steamship lines which made payments?

A. Never.

By Mr. DENISON:

Q. So far as you know, was any effort made by any of the steamship lines to meet the *prima facie* case referred to in the notices pursuant to which these deposits were made?

138 Mr. BEERS: Objected to as immaterial, irrelevant and incompetent, on the ground that the notice did not afford the steamship companies a reasonable opportunity to be heard, and threatens to deprive them of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Federal Constitution.

Objection overruled; exception.

A. Never heard of such a case.

By Mr. BEERS:

I do know that a series of threats were made by the steamship

companies, to recover the amounts exacted under Section 9 of the Immigration Act, on the ground of the alleged illegality of the exaction.

Counsel for both parties submitted the following agreed statement of facts with reference to the alien involved in the action of the International Mercantile Marine Company *v.* Stranahan, No. 3:

1. That at or about its date, the following letter was sent by the Commissioner of Immigration to the American Line, as addressed, and was received by the plaintiff, the owner of the said Line.

This letter is marked "Plaintiff's Exhibit VI," and is as follows:

"Notice of Liability on Account of Bringing Diseased Alien to the United States.

No. 19636.

Department of Commerce and Labor, Immigration Service.

(Prepare in Triplicate.)

OFFICE OF COMMISSIONER OF IMMIGRATION,
PORT OF NEW YORK, *August* 8, 1905.

To American Line, Owners of the Steamship "New York", August 6, 1905, 9 Broadway, New York City:

In conformity with the requirements of Department Circular No. 58, you are hereby notified that the certificate of the ex-
139 amining surgeon, based upon a physical examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 9 of the immigration act approved March 3, 1903.

If you desire to submit evidence to show that the said fine should not be imposed in this instance, you will be allowed fourteen days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage, upon condition that you deposit with the Collector of Customs at this port, within twenty-four hours after the receipt of this, or, if said vessel shall sail sooner, prior to her sailing, the sum of one hundred dollars as security for the payment of the said fine, should it be imposed.

Name of alien:	Steamship.	Disease.
Hage Elias Faris	"New York"	Trachoma.

(Signed) ROBERT WATCHORN,
(Name.)
Commissioner.
(Official Title.)

SMR.

Received the above notice Aug. 8, 1905, at 1.10 P. M.
(Time.)
AMERICAN LINE
Per F. BOWERS.

Witness:
SAMUEL YOUNG.

2. That this letter was the first and only notice to the effect that a payment was demanded in the case of the alien to whom it refers

3. That the sum of $100. demanded in this letter, (Plaintiff's Exhibit 6) was paid by International Mercantile Marine Company on August 9, 1905.

4. That such payment was not made voluntarily but for the purpose of obtaining clearance of the ship and thereby avoiding the serious derangement of the plaintiff's business and the heavy financial loss which would result from the failure of the ship to obtain clearance.

140 5. That coincident with the said payment which was made to the Collector of Customs of the Port of New York there was filed with the said Collector a letter, marked Plaintiff's Exhibit 7, of which the following is a copy:

AUGUST 8, 1905.

"Hon. Collector of Customs, Port of New York.

SIR: Please take notice that the Company pays to you herewith the fine of $200. imposed on it under Section 9 of the Act of March 3rd, 1903, for bringing into the United States Wordy Toome and Hage Elias Faris, passengers on the Steamship "New York;" arriving Aug. 6th, 1905, found to be afflicted with Trachoma, involuntarily and under Protest, in order to obtain a clearance of the said Steamship.

Yours truly,

AMERICAN LINE,
INTERNATIONAL MERCANTILE
MARINE CO."

6. That a notice, similar in form to defendant's Exhibit K, was issued by the surgeon in charge, at the Port of New York of the Immigration Service, in the case of the alien referred to in said Plaintiff's Exhibit 6, and that the said notice was forwarded to the plaintiff and received by it, on or about the date of the arrival of the said alien. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of such notice.

7. That the papers marked "Defendant's Exhibit L 1-6" and hereinafter transcribed into this record, are received without objection by reason of the fact that no one has been called to prove the execution thereof, or the fact that they were sent in the course of official business. Those facts being admitted, but otherwise with reservation to the plaintiff of all objections in respect to relevancy, materiality and competency, these papers are as follows:

141 THE DEFENDANT'S EXHIBIT L–I.

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK, *August* 9, 1905.

Hon. Robert Watchorn, Commissioner of Immigration, Ellis Island, N. Y.

SIR: Referring to notices of liability for fines under Section 9 Act of March 3, 1903, I have to advise you that the Compagnie Gen-

erale Transatlantique deposited with this office to-day the sum of one hundred dollars in the case of the alien passenger Meyer Halpern, who arrived on the S. S. "La Gascogne." Also that the agents of the S. S. "New York" deposited to-day the sum of two hundred dollars for the alien passengers Hage Elias Faris and Wordy Toome.

The fine of one hundred dollars in the case of the steamship "Bulgaria," alien passenger Moritz Lichtenthal has not yet been deposited.

Respectfully,
(Signed) N. N. STRANAHAN, *Collector.*

Copy.

THE DEFENDANT'S EXHIBIT I–II.

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER,
NEW YORK, N. Y., *August* 23, 1905.

Hon. F. P. Sargent, Commissioner-General of Immigration, Washington, D. C.

SIR: I have the honor to enclose for your consideration, a certificate dated August 17, 1905, by the P. H. & M. H. Surgeon-in-Charge here to the effect that Faris Hage Elias, ex S. S. "New York," American Line, August 6, 1905, has trachoma, a dangerous,
142 contagious disease; that said alien was afflicted with such disease at the time of foreign embarkation, and that its existence might have been detected by means of a competent medical examination at such time. I also enclose a duplicate notice served on the Line at 1.10 P. M., August 8, 1905, in accordance with Department Circular No. 58.

The required deposit having been made with the Collector, a period of 14 days was allowed the Line within which to file evidence and show cause why a fine should not be imposed. No evidence or other statement having since been received from the Line, I recommend that a fine of $100, be imposed in accordance with section 9 of the Act of March 3, 1903.

Respectfully,
——— ———,
Commissioner.

SMR.

Incl. 10960.

THE DEFENDANT'S EXHIBIT L–III. (Enclosed in DEFENDANT'S EXHIBIT L–II.)

Treasury Department.

Public Health and Marine Hospital Service.

Form 8949.

Medical Certificate.

PORT OF NEW YORK, *August* 7, 1905.

Name, Faris Hage Elias.
Age, 39 Native of Turkey Race Syr.
S. S. "New York."
Arrived August 6, 1905.

This is to certify that the above-described immigrant has Trachoma which is a dangerous contagious disease. Said alien was afflicted with such disease at the time of foreign embarkation and its existence might have been detected by means of a competent medical examination at such time.

(Sgd.) GEO. W. STORER,
Surgeon, P. H. and M. H. S., in Charge.

143 To the Commissioner of Immigration.
Immigration Hosp'l.

Copy.

THE DEFENDANT'S EXHIBIT L–IV.

No. 48969.

Department of Commerce and Labor, Office of the Secretary, Washington.

AUGUST 24, 1905.

Commissioner of Immigration, Ellis Island, N. Y. H.

SIR: The Department has received, under cover of your letter dated August 23, 1905, No. 19,636 the record in relation to the alien Faris Hage Elias, ex S. S. "New York," August 6, 1905.

As a result of the evidence presented and after due opportunity for hearing accorded the owners of said vessel, it appears to my satisfaction that the above-mentioned alien was, at the time of foreign embarkation, afflicted with trachoma, a dangerous contagious disease, and that the existence of such disease might have been detected at that time by means of a competent medical examination.

I therefore direct that the American Line, owners of said vessel, pay to the Collector of Customs of the Port of New York, at which port said vessel arrived, the sum of $100, as provided by section 9 of the Act approved March 3, 1903, and that you so certify to said Col-

lector in order that the amount now held by him as a special deposit on account of said diseased alien, may immediately be covered into the Treasury as an immigration fine.

Respectfully, LAWRENCE O. MURRAY,
Assistant Secretary.

FJP. TRS.

144 THE DEFENDANT'S EXHIBIT L–V.

No. 19636.

Department of Commerce and Labor, Immigration Service.

OFFICE OF THE COMMISSIONER.
NEW YORK, N. Y., *August* 25, 1905.

American Line, 9 Broadway, New York City.

GENTLEMEN: After careful consideration of all the facts relating to the alien Faris Hage Elias, who arrived on the steamship "New York" August 6, 1905, by the Bureau of Immigration and the Secretary of Commerce and Labor, I am advised by said authorities that a fine of $100. has been assessed and the Collector of the Port has been so informed. This action has been taken in conformity with Section 9 of the Act approved March 3, 1903. This notice is sent for your information.

Respectfully,
——— ———,
Commissioner.

CF.

8. That on or after August 25, 1905, the defendant paid over into the Treasury of the United States the money paid by the plaintiff pursuant to plaintiff's Exhibit 6 and referred to in the Twentieth cause of action of the International Mercantile Marine Company's Action No. 3. This admission is made by the plaintiffs without admitting the materiality, relevancy or competency of the fact.

9. That prior to the said payment over into the Treasury, the said sum was held by an official of the Custom House, in a special fund, as a deposit, to be returned to the plaintiff, in case the penalty was finally not imposed. This admission is made by the plain-

145 tiffs without admitting the materiality, relevancy or competency of the fact.

Mr. BEERS: Under my reservation made in Paragraph 7, I object to the admission of the papers marked defendant's exhibits L-1, L-2, L-3, L-4 and L-5, upon the ground that they are entirely incompetent, irrelevant and immaterial to prove the imposition of a fine upon the plaintiff, or the right to demand a deposit from the plaintiff. They show on their face that the plaintiff has had no opportunity to be heard, and no notice of intention to impose a fine before its property was demanded and taken. These proceedings cannot support the taking of plaintiff's property and the

imposition of a fine upon the plaintiff, for they seek to deprive the plaintiff of its property without due process of law, in contravention of its rights under the Fifth Amendment of the Constitution of the United States, and deprive it of its right to a trial by Court and Jury under the Federal Constitution; under the provisions of the Federal Constitution a fine can only be imposed by the judiciary and not by an executive branch of the Government.

Objection overruled; exception.

Papers received in evidence and marked respectively Defendant's Exhibits L-I, L-II, L-III, L-IV, L-V and L-VI.

Mr. STIMSON: The Defendant admits that the payment of $100. in each case referred to in the foregoing testimony by the plaintiff to the Collector of the Port of New York was made by the plaintiff involuntarily and under protest.

It is also admitted that the usual period of mail communication between the Port of Southampton, Liverpool and Antwerp, Europe and the Port of New York, is seven days each way.

146 The Court then took the above cause under consideration, and on June 16, 1908, made special Findings of Fact and Rulings upon Questions of Law, which are in the record herein.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find submitted by the defendant numbered "Sixth", as made by the Court, in so far as the Court found that a representative of the plaintiff inspected the records of the Hospital and Special Inquiry Board at Ellis Island, upon the ground that such Finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find submitted by the defendant numbered "Seventh", as made by the Court, in so far as the Court found that the plaintiff knew or might have ascertained that penalties under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect to the aliens named in the complaint, upon the ground that such Finding was without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, excepted to the Finding of Fact in the Requests to Find, submitted by the defendant, numbered "Sixteenth", as made by the Court, in so far as the Court found that the facts in the letter therein set forth did, as a matter of fact, appear to the satisfaction of the Secretary of the Department of Commerce and Labor, upon the ground that said Finding is without support in the evidence, which exception was duly allowed by the Court.

The plaintiff, by its counsel, asked the Court to find each of the eighteen Conclusions of Law so submitted by the plaintiff, and for judgment for the plaintiff for the full amount demanded in

147 the complaint. The plaintiff's motions and requests, each and all, were denied by the Court, and to each and all of the rulings of the Court thereon the plaintiff, by its counsel, duly excepted, which exceptions were duly allowed by the Court.

The defendant then, by his counsel, asked the Court to find five

Conclusions of Law submitted by him and that the plaintiff was not entitled to recover from the defendant. The Court thereupon granted such requests and did so find each of the said five Conclusions of Law, to each of which rulings the plaintiff, by its counsel, duly excepted, which exception was allowed by the Court, and the Court directed that the complaint of the plaintiff be dismissed, to which rulings the plaintiff, by its counsel, duly excepted, which exception was allowed by the Court.

The Court thereupon made a decision and order appearing in the record herein, based upon such Findings of Fact and Conclusions of Law so found by him, to which, and every part of which, in so far as it failed to direct judgment for the plaintiff, and in so far as it directed judgment dismissing the complaint, and in so far as it failed to direct judgment as requested by the plaintiff, the plaintiff, by its counsel, duly excepted, which exceptions were allowed by the Court.

Judgment was entered on said decision and order on June 24, 1908.

And now, in furtherance of justice and that right may be done, the plaintiff presents the foregoing as the bill of his exceptions in this case and prays that the same may be settled and allowed and signed and certified by the Judge, as provided by law.

Dated June 26, 1908.

LORD, DAY & LORD,
Attorneys for Plaintiff.

148 Inasmuch as the matters produced and offered in evidence on said trial and the said exceptions so made to the rulings and decisions of the said judgment do not appear on the record of the said cause in the Circuit Court of the United States for the Southern District of New York, the plaintiff has prepared and caused to be settled this bill of exceptions and so much thereof as appears herein as the record thereof in accordance with the statute in such case made and provided, the Court hereby signs and orders this bill of exceptions to be filed.

Dated, June 26, 1908.

C. M. HOUGH,
United States Judge.

We consent to the above settlement and signing of the foregoing bill of exceptions.

LORD, DAY & LORD,
Attorneys for Plaintiff.
HENRY L. STIMSON,
United States Attorney, Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District of New York.—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant.—Action No. 3.—Bill of Exceptions.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y., Filed Jun. 26, 1908, John A. Shields, Clerk.

149 Circuit Court of the United States, Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Assignment of Errors.

Plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred upon trial of the cause, to wit:

1. The Court erred in the admission of the evidence of Samuel S. Cortes given by deposition, which, in substance, related to the presence and duties of landing agents at Ellis Island.

2. The Court erred in the admission in evidence of the paper marked "Defendant's Exhibit A," being a Government Surgeon's Notice that an alien had been placed in the hospital at Ellis Island.

3. The Court erred in admitting the evidence of the said Samuel S. Cortes in relation to the custom of sending notices similar to defendant's Exhibit A.

150 4. The Court erred in the admission of evidence of the witness Samuel S. Cortes relating in substance to the practice of the plaintiff with reference to dealing with aliens at Ellis Island and with reference to the attitude towards the practice of the Government in reference to fines under Section 9 of the Immigration Act of 1903.

5. The Court erred in the admission of the evidence of the witness Samuel S. Cortes with reference to the practice of the plaintiff with reference to aliens who were the subject of the notices similar to defendant's Exhibit A.

6. The Court erred in the admission of the evidence of the defendant's witness Robert S. Crater, which, in substance, related to the checking of the names of the steerage passengers at Ellis Island in 1903, and the fact that the data of the Medical Division at Ellis Island was open to inspection by the steamship companies.

7. The Court erred in admitting the evidence of the defendant's witness William F. McDowell, which, in substance, related to the course of procedure, by which an alien at Ellis Island came into the Medical Division.

8. The Court erred in admitting the evidence of the defendant's witness, William F. McDowell, to the effect in substance that the reports of the Ellis Island Hospital were accessible to representatives of the steamship companies.

151 9. The Court erred in receiving in evidence the paper marked "Defendant's Exhibit B", being Government Surgeon's notice that the alien Necchi had been sent to the hospital at Ellis Island.

10. The Court erred in receiving in evidence the paper marked "Defendant's Exhibit C," being Government Surgeon's notice that the alien Van Geetson had been sent to the hospital at Ellis Island.

11. The Court erred in admitting the evidence of the defendant's witness, Byron H. Uhl, with reference to the right to examine records and documents, at Ellis Island and the accessibility of the reports, records and documents in reference to arriving aliens, to representatives of the steamship companies.

12. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit D," being Circular No. 58 of the Department of Commerce and Labor.

13. The Court erred in admitting in evidence the letter marked "Defendant's Exhibit E", being a letter addressed to the United States Attorney at New York by Commissioner General Sargent.

14. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F I," being a letter from Acting Commissioner Sargent at New York to the Commissioner-General at Washington enclosing Doctor's certificate in the case of the alien, Van Geetson.

152 15. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F II." being a letter from the Secretary of the Department of Commerce and Labor to the Commissioner at Ellis Island, directing the payment of $100. by the Red Star Line in the case of the alien, Van Geetson.

16. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit F III," being a letter from Acting Commissioner Murray to the Collector of the Port of New York certifying a fine of $100 for collection in case of the alien Van Geetson.

17. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G I," being a notice of liability for fine on account of bringing diseased alien to United States sent by Commissioner to American Line in the case of the alien, Nassif.

18. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G II," being a verification of landing signed by the chief of the statistical division in the case of the alien, Nassif.

19. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G III," being a letter from a deputy collector to the Commissioner of Immigration at Ellis Island stating that on July 6, 1905, the fines had not been paid in the case of the alien, Nassif.

153 20. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G IV," being a letter from the Commissioner at New York to the Commissioner General at Washington, recommending a fine of $100. in the case of the alien, Nassif.

21. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G V," being a letter from the defendant to the Commissioner stating that the deposit of $100. in the case of the alien Nassif had been made late.

22. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G VI," being a letter from the Commissioner at New York to the Commissioner General stating that the deposit of $100. in the case of the alien Nassif had been made late.

23. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G VII," being a letter from an assistant Secretary of Commerce and Labor to the Commissioner of Ellis Island imposing fine of $100. in the case of the alien, Nassif.

24. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G VIII," being a letter from the Commissioner at New York to the Collector of the Port certifying a fine of $100. for collection in the case of the alien, Nassif.

25. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit G IX," being a notice of the imposition
154 of a fine of $100, sent by the Commissioner at New York to the American Line in the case of the alien, Nassif.

26. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H I," being a letter from a Commissioner at New York to the Commissioner General recommending a fine of $100. in the case of the alien, Klaara.

27. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H II," being a letter from the Commissioner at New York to the Collector of the Port certifying a fine of $100. for collection in the case of the alien, Klaara.

28. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit H III," being a letter from the Secretary of Commerce and Labor to the Commissioner at Ellis Island directing the imposition and collection of a fine of $100. in the case of the alien, Klaara.

29. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I I," being a letter from a Commissioner at New York to the Commissioner General submitting medical certificate in the case of the alien, Necchi.

30. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I II," being a letter from the Secretary
155 of Commerce and Labor to the Commissioner at Ellis Island directing the imposition and collection of a fine of $100. in the case of the alien, Necchi.

31. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit I III," being a letter from a Commissioner at New York to the Collector of the Port certifying a fine of $100. for collection in the case of the alien, Necchi.

32. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the subject of asking for a hearing and submitting evidence after the receipt of the paper marked "Plaintiff's Exhibit 4."

33. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the hospital expenses of immigrants at Ellis Island.

34. The Court erred in admitting the evidence of the plaintiff's witness Arthur Lederer with reference to the receipt of reports similar in form to the Defendant's Exhibit C.

35. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit K," being a Government surgeon's notice that the alien, Nassif, had been sent to the hospital.

36. The Court erred in admitting in evidence the facts in the admission of plaintiff with reference to notices similar to defendant's Exhibit K and their being sent in the case of the alien, Johann Klaara.

156 37. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the attitude of the steamship companies in submitting evidence in case of aliens where a payment was demanded.

38. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the depositing of the moneys paid by the steamship companies pursuant to the demands of the Collector of the Port.

39. The Court erred in admission of the evidence of the plaintiff's witness Francis E. Hamilton with reference to the enforcement of the "twenty-four hour" provision contained in Plaintiff's Exhibit 4.

40. The Court erred in admitting the evidence of the plaintiff's witness Francis E. Hamilton with reference to the efforts made by the steamship lines to meet the *prima facie* case referred to in notices pursuant to which deposits were made.

41. The Court erred in admitting in evidence the admission of the plaintiff with reference to a notice similar to defendant's Exhibit K being sent in the case of the alien Hage Elias Faris.

42. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L I," being a letter from the defendant to the Commissioner at Ellis Island stating that a deposit of $100.

157 had been received in the case of the alien, Faris.

43. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L II," being a letter from a Commissioner at New York to the Commissioner General recommending a fine of $100. in the case of the alien, Faris.

44. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L III," being a medical certificate of the existence of trachoma in the case of the alien, Faris.

45. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L IV," being a letter from an assistant Secretary of Commerce and Labor to the Commissioner at Ellis Island directing a fine of $100. in the case of the alien, Faris.

46. The Court erred in admitting in evidence the paper marked "Defendant's Exhibit L V," being a letter from a Commissioner at New York to the American Line, stating that a fine of $100. had been imposed in the case of the alien, Faris.

47. The Court erred in admitting in evidence the admission of the plaintiff obtained in Paragraph 8 of the Statement of Facts with reference to the alien Hage Elias Faris to the effect that the money paid by the plaintiff to the defendant had been paid by the latter into the United States Treasury.

48. The Court erred in admitting in evidence the admission of the plaintiff in Paragraph 9 of the Statement of Facts with reference to the alien Hage Elias Faris to the effect that the sum paid by the plaintiff to the defendant was held as a deposit.

158 49. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered

"First," that the provisions of the Immigration Act of March 3, 1903 did not authorize the Secretary of the Department of Commerce and Labor to adopt the procedure for the collection of fines for offenses against the provisions of Section 9 of said Act, set forth in Department Circular No. 58, issued by said Secretary on or about January 25, 1905.

50. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Second," that the provisions of the Immigration Act of March 3, 1903, did not authorize the exaction of $100. from the plaintiff in the case of the alien Hage Elias Faris before any fine had been imposed upon the plaintiff.

51. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Third," that the provisions of the Immigration Act of March 3, 1903, did not authorize the withholding of clearance of plaintiff's steamship at New York in the case of the alien, Hage Elias Faris before any fine had been imposed in that case.

52. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fourth,"
159 that the exaction of $100. from the plaintiff, in the case of the alien Hage Elias Faris, deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

53. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fifth," that the imposition of the fine upon the plaintiff, in the case of the alien Hage Elias Faris, was in violation of the right of the plaintiff to have its liability to such fine established by judicial trial under Section 1 of Article III of the Constitution of the United States.

54. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Sixth," that the imposition of the fine upon the plaintiff, in the case of the alien Hage Elias Faris, was in violation of the plaintiff's right under the third subdivision of Section 2 of Article III of the Constitution of the United States to a trial by jury in a criminal prosecution.

55. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Seventh," that the imposition of the fine upon the plaintiff, in the case of the alien
Hage Elias Faris, was in violation of the right of the plaintiff
160 under the Sixth Amendment to the Constitution of the United States to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted by the witnesses against it and otherwise as stated in said amendment.

56. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eighth," that the imposition of the fine upon the plaintiff in the case of the alien Hage Elias Faris deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

57. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Ninth", that Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without a judicial trial to establish the liability to such a fine or penalty.

58. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Tenth", that Congress has no power under the Constitution of the United States to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without
161 a judicial trial to establish the guilt of the accused.

59. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eleventh," that Congress has no power under the Constitution of the United States to provide for the taking of the property of any person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such person and without a reasonable opportunity for such person to be heard.

60. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Twelfth", that under Section 9 of the Immigration Act of March 3, 1903, clearance cannot be refused unless a fine has been legally imposed for an offense against the provisions of said Act.

61. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Thirteenth", that Congress has no power to authorize the Secretary of the Department of Commerce and Labor or any other executive officer of the United States Government to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

162 62. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fourteenth," that Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government, to take private property in the form of a fine for an offense against Section 9 of the Immigration Act of March 3, 1903, unless there is legal proof that such offense has been committed.

63. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Fifteenth," that Congress has no power under the Constitution of the United States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of March 3, 1903, in advance of a trial or hearing to establish the liability for such fine.

64. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Sixteenth," that Congress has no power under the Constitution of the United

States to authorize an executive officer of the Government to compel a deposit of money as security for the ultimate payment of a fine for an offense under Section 9 of the Immigration Act of
163 March 3, 1903, in advance of a trial or hearing to establish the guilt of the accused.

65. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Seventeenth," that the provisions of the Act of March 3, 1903, did not authorize the adoption by the Secretary of the Department of Commerce and Labor of the regulations and procedure set forth in Circular 58 as a method for the imposition and collection of a fine for an offense against the provisions of Section 9 of said Act.

66. The Court erred in refusing to rule as requested in the Conclusion of Law submitted by the plaintiff numbered "Eighteenth," that the plaintiff is entitled to judgment for the recovery of the sum of $100, paid to the defendant in the case of the alien, Hage Elias Faris, with interest from the date of such payment.

67. The Court erred in refusing to direct judgment for the plaintiff.

68. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "I," that the collection of the said sum of One hundred dollars ($100), under the circumstances set forth in the Findings from the plaintiff by the defendant,
164 was authorized by Section 9 of the Act of Congress approved March 3, 1903, and entitled "An Act to regulate the Immigration of Aliens into the United States."

69. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "II," that the said Section of the said Act is constitutional.

70. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "III," that the said sum of One hundred dollars ($100) was constitutionally collected.

71. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "IV," that the payment of the said sum of One hundred dollars ($100) was a lawful condition imposed upon the privilege of clearance.

72. The Court erred in ruling upon the Conclusion of Law submitted by the defendant numbered "V," that the defendant is entitled to judgment dismissing the complaint on the merits with costs.

73. The Court erred in directing judgment for the defendant and in directing the dismissal of the complaint of the plaintiff and in refusing to find the Conclusions of Law in favor of the plaintiff.

74. The Court erred in making the Finding of Fact numbered "Sixth" of the Requests to Find submitted by the defendant
165 with reference to acts of representatives of the plaintiff at Ellis Island.

75. The Court erred in making the Finding of Fact numbered "Seventh" of the Requests to Find submitted by defendant with reference to the knowledge of the plaintiff as to the probable imposition of fines.

76. The Court erred in making the Finding of Fact numbered "Sixteenth" of the Requests to Find submitted by the defendant

with reference to certain facts appearing to the satisfaction of the Secretary of the Department of Commerce and Labor.

And the plaintiff aforesaid prays that the judgment of the Circuit Court may be in all respects reversed and that the said Circuit Court be directed to render judgment in the above entitled cause for the plaintiff for the full amount demanded by the complaint.

Dated June 26, 1908.

LORD, DAY & LORD,
Attorneys for Plaintiff.

(Endorsed:) U. S. Circuit Court, So. District of New York—International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, defendant.—Action No. 3. Assignment of Errors.—Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York.—U. S. Circuit Court, Southern District N. Y. Filed Jun- 26, 1908. John A. Shields, Clerk.

166 United States Circuit Court, Southern District of New York.

Action No. 3.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant.

Know all men by these presents:

That we, International Mercantile Marine Company, as principal, and the Fidelity and Deposit Company of Maryland, having an office and principal place of business for the State of New York at No. 2 Rector Street, in the Borough of Manhattan, in the City of New York, as surety, are held and firmly bound unto Nevada N. Stranahan in the full and just sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said Nevada N. Stranahan, or his certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our corporate seals. Dated the twenty-fifth day of June, Nineteen hundred and eight.

Whereas, Lately at a Circuit Court of the United States in a suit pending in said Court between International Mercantile Marine Company, plaintiff, and Nevada N. Stranahan, defendant, Action No. 3, a judgment was rendered against the said International Mercantile Marine Company and the said International Mercantile Marine Company having obtained a writ of error and filed a copy thereof in the Clerk's office of said Court to reverse the judgment in the

167 aforesaid suit, and a citation directed to the said Nevada N. Stranahan citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the — day of ——, 1908, next;

Now, the condition of the above obligation is such, that if the said International Mercantile Marine Company shall prosecute the said

writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

INTERNATIONAL MERCANTILE MARINE COMPANY,
By —— ——.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By HUGH M. ALLWOOD, *Attorney-in-Fact.*

Attest:
[SEAL.] JAMES R. KINGSLEY, *Attorney.*

Approved by:
——,
United States District Judge, Acting Circuit Judge.

STATE OF NEW YORK,
County of ——, ss:

On this — day of ——, 190-, before me personally came —— ——, to me known, who, being by me duly sworn did depose and say that he resided in ——, that he is the —— of the Corporation described in and which executed the above instrument, that he knew the seal of said Corporation; that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the Board of —— of said Corporation and that he signed his name thereto by like order.

168 STATE OF NEW YORK, *ss:*
County of New York,

On the 25th day of June, in the year 1908, before me personally came Hugh M. Allwood, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 3, of Chapter 720 of the Session Laws of the State of New York, for the year 1893. And the said Hugh M. Allwood further said that he is acquainted with James R. Kingsley, and knew him to be the Attorney of said Company; that the signature of the said James R. Kingsley, subscribed to the within instrument, was in the genuine handwriting of the said James R. Kingsley, and was sub-

scribed thereto by like order of the Board of Directors, and in the presence of him, the said Hugh M. Allwood.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the Company in the City of Baltimore, State of Maryland, on the seventh day of February, A. D., 1906, on motion, it was unanimously

"*Resolved*, That Henry B. Platt, Vice-President, or James R. " Kingsley, Attorney, or Frank H. Platt, Edward T. Platt, Joseph A. " Flynn, and Hugh M. Allwood, Attorneys-in-Fact of this Company, " in the State of New York, be, and each of them is, hereby author- " ized and empowered to execute and deliver any and all bonds or " undertakings for or on behalf of this Company, in its business of " guaranteeing the fidelity of persons holding places of public or pri- " vate trust and the performance of contracts other than insurance " policies, and executing or guaranteeing bonds and other undertak- " ings required or permitted in all actions or proceedings or by law " required, and to attach thereto the seal of the Company, the same to " be attested by the said James R. Kingsley, Attorney of the Com- " pany, or by either one of the other persons above named, as occasion " may require."

COUNTY OF NEW YORK, *ss:*

I, James R. Kingsley, Attorney, of the Fidelity and Deposit Company of Maryland, has compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original Resolution. Given under my hand and the seal of the Company, at the City of New York, this 25th day of June, 1908.

[SEAL.] JAMES R. KINGSLEY,
Attorney.

Fidelity and Deposit Company of Maryland.

Statement, March 31, 1908.

Resources.		Liabilities.	
Real Estate	$757,000 00	Capital Stock	$2,000,000 00
Stocks and Municipal Bonds	2,842,990 00	Surplus	2,421,185 45
U. S. Government, Railroad and other Bonds	1,467,750 00	Premium Reserve	799,509 62
British Consols	222,750 00	Reserve for Taxes (Accrued)	13,774 46
Net Premiums Due	218,638 81	Reserve for Contingent Claims	492,718 60
Cash in Bank, etc	191,879 11	Reserve for Claims Adjusted (Checks out)	2,764 09
Plant, Equipment and Material, Contract at Amsterdam, N. Y	28,944 30		
Total	$5,729,952 22	Total	$5,729,952 22

STATE OF NEW YORK,
County of New York, ss:

James R. Kingsley, being duly sworn, says that he is the Attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said Company, as of March 31st, 1908, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 25th day of June, 1908.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

169 (Endorsed:) U. S. Circuit Court, Southern District of N. Y.—International Mercantile Marine Company, Plaintiff, *vs.* Nevada N. Stranahan, Defendant, Action No. 3—Bond.—I approve of the within Bond and of the sufficiency of the Surety therein. Dated June 26, 1908. C. M. Hough, D. J.—U. S. Circuit Court, Southern District N. Y., Filed Jun- 28, 1908, John A. Shields, Clerk.

170 THE UNITED STATES OF AMERICA, *ss:*

To Nevada N. Stranahan, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington, on the 24 day of July 1908 next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein the International Mercantile Marine Company is plaintiff in error, and you are defendant in error, Action No. 3, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the City of New York, in the circuit and district above named this 26 day of June, in the year of our Lord, one thousand nine hundred and eight.

C. M. HOUGH,
District Judge of the United States for the Southern District of New York, Acting Circuit Judge.

171 [Endorsed:] E. & A. C. 2781. U. S. Circuit Court, So. Dist. of New York. International Mercantile Marine Company, Plaintiff, against Nevada N. Stranahan, Defendant. Action No. 3. Citation. Lord, Day & Lord, Attorneys for Plaintiff, 49 Wall Street, New York. Service admitted. Henry L. Stimson, Att'y for Def't.

Jun- 26/08. U. S. Circuit Court, Southern District N. Y. Filed Jun- 26, 1908. John A. Shields, Clerk.
172 [Endorsed:] United States Supreme Court. International Mercantile Marine Co., Pl'ff in Error, *vs.* Nevada N. Stranahan, Def't in Error. Action No. 3.

Endorsed on cover: File No. 21,307. S. New York C. C. U. S. Term No. 511. International Mercantile Marine Company, plaintiff in error, *vs.* Nevada N. Stranahan. Filed August 15th, 1908. File No. 21,307.

173 Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of New York.

October Term, No. 511.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the Clerk of the United States Supreme Court be and hereby is authorized and requested to correct the record herein so that the ruling now appearing at the close of the Findings of Fact submitted by the defendant, "All found. C. M. H.", shall appear opposite or underneath the words "Conclusions of Law", (page 21) and so that the ruling now appearing at the close of the Findings of Fact submitted by the plaintiff, "All refused. C. M. H.", shall appear opposite or underneath the words "Conclusions of Law" (page 29) and that said changes be made by the insertion of a slip or otherwise in the discretion of the Clerk of the Supreme Court; and it is further

Stipulated and agreed that such changes be made *nunc pro tunc* as the date of the filing of the record herein, namely, August 15, 1908.

LUCIUS H. BEERS,
Per D. E. P.,
WM. G. CHOATE,
Counsel for Plaintiff in Error.
H. M. HOYT,
Solicitor General,
Counsel for Defendant in Error.

174 [Endorsed:] File No. 21,307. Supreme Court U. S. October Term, 1908. Term No. 511. International Mercantile Marine Co., Pl'ff in Error, *vs.* Nevada N. Stranahan. Stipulation to correct record. Filed Dec. 2d, 1908.

177 142,086.

511—21,307.

Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of New York.

October Term, No. 511.

INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the Clerk of the United States Supreme Court be and hereby is authorized and requested to add to the printed record herein a slip containing the opinion of Hon. Charles M. Hough, rendered herein, a certified copy of which is annexed hereto, and it is further

Stipulated and agreed that such opinion be deemed to be and be in all respects a part of the record herein certified by the Clerk of the Circuit Court for the Southern District of New York.

LUCIUS H. BEERS,
Per D. E. P.,
WM. G. CHOATE,
Counsel for Plaintiff in Error.
H. M. HOYT,
Solicitor General,
Counsel for Defendant in Error.

176 [Endorsed:] Supreme Court of U. S. In error to the Circuit Ct. of U. S., Southern District of N. Y. International M. M. Co., Pl'ff in Error, against Nevada N. Stranahan, Def't in Error, October Term, No. 511. Stipulation.

177 Circuit Court of the United States, Southern District of New York.

Action No. 1.
Action No. 3.

INTERNATIONAL MERCANTILE MARINE CO.
vs.
NEVADA N. STRANAHAN.

Action No. 1.

OCEANIC STEAM NAVIGATION CO.
vs.
NEVADA N. STRANAHAN.

Statement by the Court.

The plaintiffs in these suits are steamship owners in the North Atlantic trade: the International Mercantile Marine Co. operating the "American" and "Red Star" lines, and the Oceanic Steam Navigation Co. the "White Star" line. Defendant is the Collector of Customs at this port.

The actions are brought to recover, as illegally exacted, various sums of $100 each, paid defendant as a condition of procuring clearance for certain of plaintiffs' ships.

Defendant's justification for such exaction is Sec. 9 of the Immigration Act of 1903, declaring it "unlawful for any person
178 including any transportation company * * * to bring into the United States any alien afflicted with a loathsome or with a dangerous contagious disease," and further prescribing that "if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien so brought * * * was afflicted with such disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such * * * transportation company * * * shall pay to the Collector of Customs * * * $100 for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such *fine* imposed upon *it* remains unpaid."

Plaintiff transportation Companies did bring to this country aliens afflicted with the proscribed diseases; it did appear to the satisfaction of the Secretary that the aliens were so afflicted when plaintiffs embarked them, and that their condition might have been detected by competent medical examination. Neither here, nor before any departmental officer, have plaintiffs disputed these facts; it being the essence of their demand that the existence of disease and the absence of proper inspection therefor, are alike immaterial, inasmuch as either the statute under which defendant acted, or the procedure under it, or both, are unconstitutional, and therefore ineffectual to prevent recovery of moneys exacted by defendant under the obvious

compulsion of stopping the voyage of a ship worth millions, until a paltry hundred was forthcoming.

The practice under Sec. 9 has not at all times been the same. Before January 25th, 1905, the procedure (in New York at all events) was to examine the immigrants and decide whether
179 any were obnoxious to the section, after which a notice was sent to the ship owner, informing him in substance that he would pay a fine of $100 per diseased immigrant, before his ship could clear; and this writing was the first communication of any sort given by the Department to the carrier on the subject.

After the date mentioned, written notice was first given the ship owner that diseased aliens had been discovered on a given ship and that the Secretary was satisfied that their condition could and should have been ascertained at the time and by the examination mentioned in Sec. 9; wherefore fourteen days were given wherein the persons notified might show cause why their ship should not be fined, and in the meantime clearance was granted only on deposit of $100 as security for the payment of each fine that might be ultimately imposed.

This change in practice was wrought by Circular 58, and some of the money now sued for was exacted before the circular, and some after.

So far as the evidence herein discloses, Circular 58 made no difference at all to these plaintiffs. Before the Circular date they unofficially knew as soon as inspection of immigrants — completed, how many fines they would be required to pay for any given ship; getting such information from their own representatives whose business took them regularly to Ellis Island; and after the Circular they had the same means of knowledge, plus a notice which told them nothing new, if their Ellis Island men were alert. But whether information of trouble came in one way or another, plaintiffs' course was the same, *i. e.*, to do nothing—so far as denying the Department's allegations was concerned.

180 These are, I believe, the facts shown by the evidence, all objections to which have been overruled, in order that everything in which counsel have based argument may be before the Appellate Court, and not because I deem it all material or relevant. On the contrary I do not think that the information gleaned by plaintiffs, through their own men, whether before or after Circular 58, bound them at all. For legal purposes the first knowledge they had of official purpose or decision, at any time, was the official notice. Further, I consider fourteen days are unreasonably short time within which to show cause, if the shipowners were unprepared with any information regarding the physical condition of their passengers on embarkation,—which was the state of the case, and which plaintiffs' counsel assume as a reasonable and lawful position on their clients' part.

The fact is that the carriers brought in the aliens on the chance that they would not be deported, and they now assert in effect that the "rules of the game" have not been observed in punishing them for taking the chance.

The cases have been tried without a jury. Formal findings will be signed in accordance with this statement and the following opinion:

William G. Choate and Lucius H. Beers, Esqs., for Plaintiffs.
Henry L. Stimson, U. S. Attorney, and W. T. Dennison and F. Frankfurter Esqs., for Defendant.

HOUGH, *D. J.:*

To declare unconstitutional, especially in a Court of first instance, an Act of Congress, is an exercise of judicial power warranted (in cases where no great and immediate financial loss is
181 threatening) only when the unconstitutionality exists beyond a rational doubt.

The practice of which the statute under consideration is an instance, *i. e.*, using a refusal of clearance as a means of extorting settlement of governmental claims, is nearly as old as the Union (R. S., Sec. 4206) and has for twenty years past been a part of our immigration system. (Acts Feb. 23, 1887, Sec. 8, Mch. 3, 1891, Sec. 10.) I am not advised of any previous attack upon the practice. It is not asserted that the exact form of words contained in Sec. 9 of the Act of 1903, is any older than that statute, but I believe that most of the battery of argument directed against it, might with equal force have been used against other Acts of Congress for many years back; and that fact alone would strongly incline me to leave the Constitutional question for the higher Courts;—pursuing the course illustrated by Spreckels Co. *v.* McClain, 113 F. R., 244.

I do not however incline to think the Act unconstitutional. For some years I have regarded it as harshly opposed to the spirit of the Constitution, and perhaps capable of use in derogation of earlier treaty rights of citizens of friendly nations;—yet entirely within the Congressional power of regulating foreign commerce. This predisposition has rendered the more necessary, careful study of the brief of distinguished counsel for plaintiffs; after which I am still unable to assent to their conclusions.

The proposition first advanced, going to the root of the whole matter, is that Sec. 9 creates a crime, viz., bringing into the country a diseased alien whose condition might in official opinion have been discovered at the port of embarkation; and for that crime provides a sanction, viz., a fine of $100.

From this premise, flows the conclusion that by constitu-
182 tional guaranty a jury trial is secured to those alleged to have committed the crime and incurred the fine.

The premise asserted, rests wholly on the use of the word *"fine"* in the section considered. A crime is a wrong which the Government "punishes in what is called a criminal proceeding in its own name" (U. S. *v.* Lee Huen, 118 F. R., at 455), and since the punishment meted out is a "fine," and a "fine" can be collected only in a "criminal proceeding," therefore that which the statute calls unlawful, must be a crime because it entails a fine.

This is putting on one word more than it can bear. Fine and penalty are frequently used interchangeably, as in Cunard Co. *v.* Stranahan, 134 F. R., 318, and the mere use of the word fine is not conclusive as to the nature of the action at law leading up to it (1 Bish. Crim. Law, 7th Ed., 17, n.).

The ingredients of a statutory crime are as well the sanction as the prohibition. An act may be *malum in se* and yet no crime even at common law; it may be *malum prohibitum*, yet if the machinery of the criminal law,—the method of enforcement called in the Lee Huen case the "criminal proceeding" be denied,—there is no crime. There being no common law offenses against the United States, a federal statute adding to the list of offenses must at once define it, denounce it and afford the appropriate remedy. It has been somewhat loosely said that a crime is an offense punishable through indictment, yet clearly it is a vital element of a crime, legally speaking, that its punishment be reachable through indictment or information.

It would I think puzzle the astutest attorney, to draw open to conviction an indictment on this section of the act. It would be necessary to accuse a *person*, yet the "fine" is imposed on a
183 "ship," while on conviction the Court would be obliged to direct the payment of $100 *to the Collector*, a method of collection hitherto unheard of on the criminal side.

Evidently Congress did not *intend* by this statute to add to the Criminal Code and it certainly denied to any crime it inadvertently seemed to create, the only proper method of enforcement. To construe the act reasonably, therefore, the $100 "fine" must be considered a penalty, and if suable at all, recoverable in debt (U. S. *v.* Banister, 70 F. R., 44).

Irrespective, however, of the argument just considered, plaintiffs urge that all proceedings under Sec. 9 are void, as depriving them of their property without due process of law,—the exactions prior to Circular 58 having been made without notice or opportunity to defend, and those after the Circular in accordance with a procedure not warranted by the Act itself. The sum of this contention is, that whether the Statute be hopelessly vicious or not, no constitutional method of enforcing its provisions has as yet been put in practice.

If this be possibly true, the preliminary enquiry is vital,—of what right or property have the plaintiffs been deprived? This question their counsel have answered thus:

"The right which the plaintiffs are here asserting is the right of ownership of their own funds. That is a constitutional right, and plaintiffs are here claiming that that constitutional right has been infringed by the taking of their property."

This statement, I am compelled to think compounds effect and cause,—it really begs the question. Truly the plaintiffs paid money under compulsion: but they did so to get clearance, and the real grievance, the *causa causans* of the train of events was the
184 refusal of clearance. If that was lawful and constitutional, everything was right enough: so that the logical questions are, (1) Had Congress a constitutional right to refuse clearance

under the circumstances and in the manner set forth in Sec. 9; and (if such right exists) (2) Was clearance refused in accordance with the terms of the statute?

As to the second query, it is enough to say that no substantial defect has been pointed out. The procedure before Circular 58 was in literal compliance with the statute, which provides for no notice, and that since the Circular while more merciful in form is at least no more drastic in effect than that of earlier date.

The first question requires consideration of the nature of clearance. The word means to satisfy the customs harbor dues and the like and obtain from the governmental authority of the port leave to depart, and in that sense was known to the language before the establishment of our Federal government (Oxford Dict. Murray, tit. clear and clearance). In the absence of statute clearance is but the gracious permission of the Sovereign to depart from a port into which without like permission contained in an entry, there was no right to come. In the United States this sovereign power is, by the Commerce clause of the Constitution, lodged in the federal government; and the privilege of clearance is granted, regulated or withheld by statute. It may be wholly suspended by embargo, of which domestic vessel owners cannot complain; and though it afford to foreign owners a *casus belli,* they are entitled to no judicial relief. It is only if and when the same power that can altogether withhold clearance, transforms the favor thereof into a statutory right
185 that vessel owners can complain at law. Hendricks *v.* Gonzalez, 67 F. R., 351.

In the present instance the very statute of which plaintiffs complain gives them the right of clearance; on payment of the sums they seek to recover. It was within Congressional power to refuse them clearance altogether. I do not think they can complain of getting it at a price.

The foregoing considerations, if well founded dispose of the cases at bar, but another line of argument has been presented, deserving statement.

As was said in Murray's Lessee *v.* Hoboken, &c. Co., 18 How., at 284, "there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination; but which Congress may or may not bring within the cognizance of the Courts of the United States, as it may deem proper."

That the regulation of immigration is one of these matters, and that Congressional action in withdrawing it almost wholly from the judicial domain is constitutional, has been decided in a line of cases too recent and familiar to need citation. Incidental to the regulation of immigrants, and absolutely necessary to efficiency of administration, is regulation of those who make immigrants possible. The importance of such regulation cannot be exaggerated, and in a city which is at once the immigrant gateway, and dumping ground need not be dilated upon.

Section 9 of the Act of 1903, is, in my judgment, a sanitary measure, necessary both for healthy immigrants and uninfected

Americans, and as such belongs eminently to that class of summary executive proceedings, transfer of which to the judicial
186 branch would "swamp the Courts" (Sing Tuck, 194 U. S., 170), and "defeat the object sought to be attained" (Sing Lee, 54 F. R., 334).

Every consideration leading to the judgments in Buttfield *v.* Stranahan, 192 U. S., 470, and Lawton *v.* Steele, 152 U. S., 133, makes to uphold the present statute. The destruction of inferior tea and unlawful fishnets, by summary process and without hearing is certainly no less an infraction of private right than is here complained of. Undoubtedly the power is great, and may be unjustly used, but if under this as under other sections of the Immigration Law, executive officers act under peril of suit or legal review, for abuse of discretion or malicious conduct;—those who bring diseased aliens into the country have as large judicial protection as have the aliens they bring;—in each instance as much as the nature of the case will (in Congressional opinion) permit.

The result I have reached is not consistent with the judgment directed on the trial of Cunard Co. *v.* Stranahan (*supra*). When that trial was had the more recent and important of the decisions committing immigration matters to executive officers had not been handed down, nor does it appear that the nature of clearance was argued; and in truth I find it difficult if not impossible to reconcile the direction of a verdict with the reported views on the demurrer. The safest plan is to regard only the reported decision, with which I agree, and in which I find nothing opposed to the views here advanced.

Let judgment for defendant be entered in each case.

August 24th, 1907.

C. M. HOUGH, *U. S. D. J.*

187 (Endorsed:) U. S. Circuit Court, S. D. N. Y.—Int. Merc. Mar. Co. *vs.* Stranahan.—Oceanic St. Nav. Co. *vs.* Stranahan.—Opinion, Hough, D. J.—8/24/07.—U. S. Circuit Court Southern District N. Y., Filed Aug. 26, 1907, John A. Shields, Clerk.

A Copy.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

188 [Endorsed:] File No. 21,307. Supreme Court U. S. October Term, 1908. Term No. 511. International Mercantile Marine Co., Pl'ff in Error, *vs.* Nevada N. Stranahan. Stipulation of counsel & addition to record. Filed Dec. 2d, 1908.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

Nos. 509, 510, 511.

Office Supreme Court, U. S.
FILED
OCT 7 1908
JAMES H. McKENNEY
Clerk

OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
Plaintiff-in-Error,

against

NEVADA N. STRANAHAN,
Defendant-in-Error,

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY,
Plaintiff-in-Error,

against

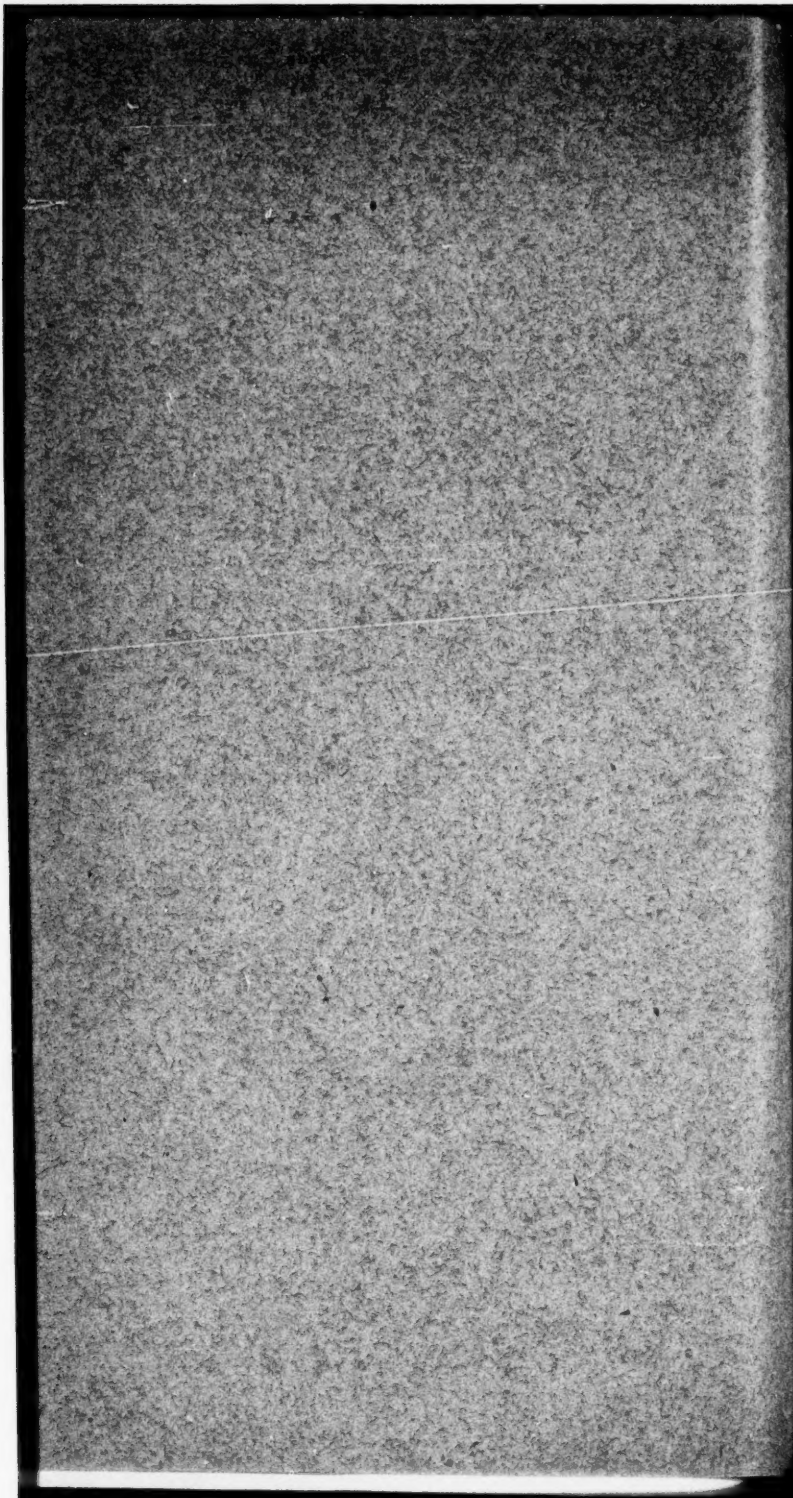
NEVADA N. STRANAHAN,
Defendant-in-Error,

Actions Nos. 1 and 3.

MOTION TO ADVANCE.

WILLIAM G. CHOATE,
LUCIUS H. BEERS,
Counsel for Plaintiffs-in-Error.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.



Supreme Court of the United States.

OCEANIC STEAM NAVIGATION COMPANY, Limited,
Plaintiff-in-error,

against

NEVADA N. STRANAHAN,
Defendant-in-error,

Action No. 1.

No. 509.

2

INTERNATIONAL MERCANTILE MARINE COMPANY,
Plaintiff-in-error,

against

NEVADA N. STRANAHAN,
Defendant-in-error,

Actions Nos. 1 & 3.

Nos. 510 & 511.
October Term,
1908.

3

Come now the plaintiffs-in-error by William G. Choate and Lucius H. Beers, of counsel, and move this Court to advance for hearing on the calendar of this Court the above causes upon the facts and

grounds set forth in the annexed affidavit of Lucius H. Beers.

WILLIAM G. CHOATE,
LUCIUS H. BEERS,
Counsel for Plaintiffs-in-error.

To Hon. HENRY M. HOYT,
Solicitor General of the United States.

PLEASE TAKE NOTICE that on the 12th day of October, 1908, the foregoing motion will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Dated October 5. 1908.

WILLIAM G. CHOATE,
LUCIUS H. BEERS,
Counsel for Plaintiffs-in-error.

SUPREME COURT OF THE UNITED STATES.

OCEANIC STEAM NAVIGATION COMPANY, Limited,
Plaintiff-in-error,

against

NEVADA N. STRANAHAN,
Defendant-in-error,

Action No. 1.

No. 509.

INTERNATIONAL MERCANTILE MARINE COMPANY,
Plaintiff-in-error,

against

NEVADA N. STRANAHAN,
Defendant-in-error,

Actions Nos. 1 & 3.

Nos. 510 & 511.
October Term,
1908.

STATE OF NEW YORK,
County of New York,
Southern District of New York, } ss.:

LUCIUS H. BEERS, being duly sworn, says: I am one of the counsel for the plaintiffs-in-error in the above entitled causes, which are in this Court by virtue of three several writs of error granted June 26, 1908, directed to the Circuit

Court of the United States for the Southern District of New York. The returns to said writs were filed in the office of the Clerk of this Court on or about August 15, 1908. Said causes are Nos. 509, 510 and 511, October Term, 1908.

Each of the above mentioned causes involves the constitutionality of Section 9 of the Immigration Act of 1903, and the legality of the method of procedure adopted by the Government for the enforcement thereof. The terms of that section are as follows:

> "That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such fine imposed upon it remains unpaid, nor shall such fine be remitted."

The plaintiffs-in-error are engaged in operating lines of steamships between European ports and the port of New York, generally known as the

White Star Line, American Line and Red Star Line. The defendant-in-error was the Collector of the Port of New York at the time of the commencement of these actions. 13

The actions were brought to recover sums of $100 each that had been exacted by the defendant from the plaintiffs on account of alleged violations of Section 9, above quoted. The defendant having refused to grant clearance to certain of the steamships operated by the plaintiffs until the alleged fines were paid, plaintiffs paid the amount thereof involuntarily, and only for the purpose of obtaining clearance.

At the time this action was brought similar actions were brought by some twenty steamship companies operating steamships between foreign ports and the Port of New York to recover some five hundred sums of $100 each exacted under similar circumstances under Section 9 of the Act. A large number of payments have been made by steamship companies at other ports upon which suit has not yet been brought. As appears from the evidence in this case, introduced by the Government, up to February 26, 1907, some twelve hundred fines had been imposed. 14

In order that the constitutionality of Section 9 and the legality of the method of procedure thereunder adopted by the Government, might be determined with the least delay an arrangement was made between the attorneys for the plaintiffs-in-error and the United States Attorney for the Southern District of New York acting for the defendant-in-error that certain counts in the actions brought by the steamship companies should be selected and tried and carried through as test cases and that the balance of the counts in the 15

actions which had been begun and actions on future payments made under Section 9 should be reserved pending the final decision of this Court of the cases which should be so selected. Accordingly, five counts were chosen which, in the opinion of both sides, presented all phases of the controversy between the steamship companies and the Government relating to the enforcement of Section 9. Two of these counts were based on sums paid by the plaintiff, Oceanic Steam Navigation Company, Limited, operating the White Star Line, and three upon payments made by the plaintiff-in-error, International Mercantile Marine Company, operating the American and Red Star Lines. The actions involving these five counts were tried together in the Circuit Court for the Southern District of New York without a jury before United States District Judge Charles M. Hough, who sustained the provisions of Section 9 and the procedure of the Government officers in enforcing the same (155 Fed. Rep., 428). Judgment was entered on his decision in June, 1908, and on June 26, 1908, the steamship companies applied for the writs of certiorari to this Court in order to review his decision. The writs were granted and the cases are now in this Court Nos. 509, 510 and 511 on the October 1908 term.

Section 9 of the Act of 1903 was not materially changed by the Immigration Act of 1907. Section 9 of the new act relates to the same subject matter and is as follows:

> "That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States any alien sub-

ject to any of the following disabilities: Idiots, imbeciles, epileptics, or persons afflicted with tuberculosis or with a loathsome or a dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fine, and in the event such fine is imposed, while it remains unpaid; nor shall such fine be remitted or refunded: *Provided*, that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine and costs, such sum to be named by the Secretary of Commerce and Labor."

An examination of the phraseology of this section shows that section 9 of the Act of 1903 has not been amended in a way which would prevent the decision of this Court in these cases from being applicable to cases which have already arisen and will from time to time arise under the Act of 1907.

A large number of steamship companies are operating their ships between European ports and ports of the United States carrying thousands of immigrants each month and it is natural that

among so many immigrants there should be some afflicted with disease and in many of such cases the Government may impose fines by virtue of the provisions of this section. I regard it of great importance to the commercial and shipping interests of this country that the questions involved in these cases should be speedily determined, and it is of great importance not only to the steamship companies, but to the Government, that the questions arising under this section should be finally settled, and that both the steamship companies and the Government have the benefit of the decision of this Court in dealing with questions arising under Section 9.

It is therefore asked on behalf of the plaintiffs-in-error that the above causes Nos. 509, 510 and 511 may be advanced upon the calendar of this Court and assigned for argument at as early a date as the engagements of this Court will permit.

LUCIUS H. BEERS.

Sworn to before me this 5th day of October, 1908.

LEONARD LEAMAN,
Notary Public,
[SEAL.] New York County.

Office Supreme Court, U. S.
FILED.
JAN 15 1909
JAMES H. McKENNEY,
CLERK.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

Nos. 509, 510, and 511.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

INTERNATIONAL MERCANTILE MARINE COMPANY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

STENOGRAPHIC REPORT OF ORAL ARGUMENT.

LUCIUS H. BEERS AND
WILLIAM G. CHOATE,
Counsel for Plaintiffs in Error.
WADE H. ELLIS,
Assistant to the Attorney General,
Counsel for Defendant in Error.

(21,305, 21,306, and 21,307.)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

Nos. 509, 510, 511.

OCEANIC STEAM NAVIGATION COMPANY, LIMITED, PLAINTIFF IN ERROR,

against

NEVADA N. STRANAHAN, DEFENDANT IN ERROR.

Action No. 1.

INTERNATIONAL MERCANTILE MARINE COMPANY, PLAINTIFF IN ERROR,

against

NEVADA N. STRANAHAN, DEFENDANT IN ERROR.

Actions Nos. 1 and 3.

WASHINGTON, D. C.,

MONDAY, *January* 11, 1909—2:50 o'clock p. m.

The above causes came on for hearing on the above date.

Present on behalf of the plaintiffs in error, Hon. WILLIAM G. CHOATE and LUCIUS H. BEERS, Esq.

Present on behalf of the defendant in error, Hon. WADE H. ELLIS, Assistant to the Attorney General, and E. P. GROSVENOR, Esq.

ARGUMENT OF LUCIUS H. BEERS, ESQ.,

On Behalf of the Plaintiffs in Error.

Mr. BEERS: May it please the Court: These three cases were advanced by order of the Court, to be heard together. They involve questions under the laws of the United States and under the Constitution, more particularly under the Constitution; and so they come directly on writ of error directed to the United States Circuit Court for the Southern District of New York. The actions were brought to recover the amount of certain fines which were imposed on the plaintiffs in error, which are steamship companies. Those fines were imposed under section 9 of the Immigration Act of 1903. That section provides:

"That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel, to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury"——

And that has since been changed to "the Secretary of Commerce and Labor."

Mr. Justice WHITE: Where are you reading from your brief?

Mr. BEERS: I am reading from the second page of my brief; I am reading the statute.

"And if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs

district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such fine imposed upon it remains unpaid, nor shall such fine be remitted."

That is section 9 of the Immigration Act of 1903.

Mr. Justice MOODY: This is obviously a case brought by the Government.

Mr. BEERS: Yes, your Honor.

Mr. Justice MOODY: And what is the date of it?

Mr. BEERS: The summons was dated in the summer of 1906. Issue was not joined until the following summer, until June, 1907; and the cases were tried in June, 1907. The cases were not at issue in December, 1906.

These three actions were originally brought for the recovery of seventy different fines; and as originally brought they contained seventy different counts. For the purpose of avoiding an unnecessarily voluminous record in this Court, they were severed so as to present test cases; and in these three cases which are now before the Court only some five counts, relating to five fines, are presented. The other sixty-five counts are in the portions of the actions which have not been brought up.

The three cases were tried together by stipulation, without a jury, before Judge Hough in the Circuit Court for the Southern District of New York. The same testimony was taken to apply to all three of the cases, by stipulation.

During the period in which these fines were imposed, the Department of Commerce and Labor changed its practice in respect to the imposition of the fines by issuing a departmental circular, which is called "Circular No. 58." So that these fines are separated into two groups—first, the fines which were imposed before Circular 58; and, second, those that were imposed after Circular 58.

Mr. Justice PECKHAM: Before what, did you say?

Mr. BEERS: Before Circular 58. It was a circular of the

Department of Commerce and Labor which regulated the imposition of fines.

The trial judge held for the defendant; and there were special findings which appear in full in these records. The facts found are, briefly, these:

The plaintiffs in error are an American and a British corporation—one the Oceanic Steam Navigation Company and the other the International Mercantile Marine Company.

Mr. Justice WHITE: You say the trial judge held for the defendant?

Mr. BEERS: For the defendant.

Mr. Justice WHITE: How is it that the steamship company comes here, then? The defendants were the steamship companies, were they not?

Mr. BEERS: No; the defendant was the Collector, Mr. Stranahan. The trial judge held in his favor.

Mr. Justice WHITE: Oh, yes—I beg pardon. I thought the steamship companies were the defendants.

Mr. BEERS: No.

Mr. Justice WHITE: This is a suit to recover the fines?

Mr. BEERS: This is a suit to recover the fines. It was brought in the State court, and was removed to the Circuit Court.

Mr. Justice WHITE: Oh, yes!

Mr. BEERS: These two companies—the Oceanic Steam Navigation Company, which is generally known as the White Star Line and is a British corporation, and the International Mercantile Marine Company, which is a New Jersey corporation—operate lines of passenger steamships to the port of New York, which are conducted on a regular schedule; and the business of the lines is arranged with reference to that schedule. Their contracts with the passengers and with shippers are made with reference to those dates of sailing; and any disarrangement of their schedule would involve very serious loss. And the defendant, Mr. Stranahan, was the Collector at that time of the port of New York.

Taking up first those fines which were imposed before the issuance of this Circular 58 of the Department of Commerce and Labor, this is what was done: Shortly after the arrival of the steamers named in the complaints a letter was received by the plaintiff in error stating that the Secretary of Commerce and Labor had imposed a fine on it, because he was satisfied that the alien who is named in this notice was suffering from a dangerous contagious disease, and that the existence of that disease might have been detected if there had been a competent medical examination at the port of embarkation. And in that letter it was also stated that no clearance would be given to the ship until the fine was paid. In reference to the subject of notice and of opportunity to be heard, the trial judge made three separate findings, and as they are very important and quite short, I should like to read them to the Court. The first of the findings is:

"The receipt of such letter was the first notice the plaintiff received that the imposition of a fine under section 9 of the Immigration Act of 1903 was contemplated by the Secretary of the Department of Commerce and Labor or any other officer of the Government of the United States."

Then, in reference to the imposition of the fine, it was further found:

"In imposing said fine, the Secretary of the Department of Commerce and Labor acted without notice to the plaintiff and without any opportunity to the plaintiff to be heard."

Then, again:

"Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity and without any hearing or proceeding whatever of which the plaintiff had notice or at which the plaintiff had an opportunity to be heard or to produce evidence."

The argument of the Attorney General, as it appears in his brief, is based in part on evidence which was introduced at the trial in support of a claim of some sort of notice to

the steamship companies. That claim failed. That is, the Collector, at the trial, over our objection, offered testimony with respect to the method by which these aliens are examined at Ellis Island, and that testimony was that as they are examined, as they come up in lines at Ellis Island, certain of them are picked out and sent to the hospital, either for treatment or for observation; and when they are so sent to the hospital (that is, for treatment or for observation) the steamship companies are notified of the fact—that is, that they have been sent to the hospital for treatment or for observation.

There is no evidence in the case to show how many of those who were so sent to the hospital were ultimately passed. Obviously some were passed, because some were sent merely for observation; and, of course, if it turned out to be the fact that they were not suffering from any dangerous contagious disease, they would, in the ordinary course, be passed. But there is no evidence to show what the result of that first sifting was. But, coming down, then, to the residue of this body of aliens who were sent to the hospital—coming down to those who were actually deported—the Government testimony shows that in only one case in eight of these contagious diseases was any fine imposed. In the four years preceding this trial there had been about 9,300 deportations for contagious disease. In the same period there had been 1,125 fines.

Mr. Justice WHITE: I beg pardon; will you not make that statement over again?

Mr. BEERS: I say, in the four years which had preceded the trial of these cases there had been between 9,300 and 9,400 deportations of aliens for contagious disease, and during the same period there had been only 1,125 fines imposed under section 9. Your Honors will observe that the deportation had merely to do with the existence of the disease at the time when the alien attempted to come in. The other question was as to the previous history of the disease.

Mr. Justice WHITE: The fact remains that during that period there were 1,100 fines imposed?

Mr. BEERS: There were 1,125 fines imposed.

The Government also showed that the plaintiffs in error and other steamship companies had subordinate employees at Ellis Island who were called "landing agents," whose duties were to see to the forwarding of passengers, giving them their tickets, seeing that they got their baggage, and that they proceeded to their destinations; and there was testimony offered to the effect that the general records of Ellis Island were open to the inspection of those landing agents; that is, that if they had traced up separate cases they might have found that certain aliens had been sent to the hospital, that the doctor might conclude that the case had had a certain history, and that in that case the Secretary might conclude to impose a fine. But it was found that there was no actual notice whatever, even to the landing agents.

But the whole claim of notice to the steamship company, although that claim was pressed by the Government at the trial, failed; that is, the trial judge found in several different ways that there was no notice. I have read to your Honors the findings that he made on that subject; and when he said there was no notice, he did not limit the word "notice" in any way, either to formal notice or any other sort of notice. And the trial judge did not decide this case at all with reference to there being any notice to the plaintiffs in error or the steamship companies. So we claim that that was a question of fact which is settled by the findings, and that it is not open for controversy in this Court; and my only reason for referring to it at length is because certain argument in the Government brief is based on that evidence which was overruled by the findings.

In passing, I wish to call your Honors' attention to the fact that in the Government brief these fines are called "penalties."

There are a number of cases which have discussed the meaning of the word "fine" and the word "penalty." So far as we have been able to discover, there has been no case which has made any accurate definition which would serve in all cases to distinguish between the meaning of the two terms. But it is uniformly recognized that the word "fine" is applied in cases where there is more element of fault, of criminality, and to more serious punishment than in the case of "penalty."

Obviously, the best light that can be thrown on this question of whether this is or is not a fine, or whether it is a fine or is a penalty, is the intention of Congress; and Congress makes that perfectly clear by section 9, for Congress calls it a fine in two places. It speaks of this as a fine. And I would also invite the Court's attention to the fact that every Government official who deals with these exactions calls them "fines." The solicitor for the Collector, the Secretary of the Department, these formal departmental circulars, all the notices issued under them, always refer to them as "fines."

When these fines were imposed the Collector required the payment of $100, and he did not give a clearance unless it was paid. The plaintiffs in error paid those fines involuntarily and under duress, and they paid them in order to avoid the loss and derangement of their business which would result if one of their ships was tied up at their pier.

The defendant at the trial admitted that these fines were paid involuntarily and under duress; and it was found that the Collector of the port of New York had adopted a uniform practice with respect to the imposition of these fines, and had made that practice known to the steamship companies. It was proved by the testimony of the solicitor for the Collector, and was found in the findings, that it was well known to the Collector that the steamship companies claimed that these exactions were illegal and unconstitu-

tional, but he had at all times disregarded their protests, and these fines were a few of a very large number, and in all of them he had disregarded the protests and imposed the fines.

We come, then, to those fines which were imposed after Circular 58.

Circular 58 of the Department of Commerce and Labor appears in the record; and the change which it made was this: By that circular the Secretary required that when one of these cases arose a notice should be sent to the steamship company, giving the form of the notice explicitly, so that all that needed to be done was to fill out the name of the vessel and of the alien in the notice. This notice was to state that the physical examination of the certain alien who is named indicates that he is suffering from a dangerous contagious disease, and that the existence of that disease would have been detected at the port of foreign embarkation if there had been a proper medical examination then.

The notice then continues, and says to the steamship company:

"If you desire 'to submit evidence,' "——

and I call your Honor's attention to those three words——

—"to show that the fine should not be imposed, you will be allowed fourteen days within which to do so; and clearance of the ship will be permitted provided the sum of $100 is paid within twenty-four hours after the giving of the notice."

It was found by the trial judge that these notices sent out under Circular 58 were the first notices in reference to the imposition of the fine. Certain of these deposits of $100 were made within the time limited—that is, within the twenty-four hours; and certain were not made until after the expiration of the twenty-four hours; but in no case was

any evidence submitted, and the fines were in all cases imposed. That is, the Collector exacted the sum of $100 before any of these ships were allowed to proceed to sea; and those payments were made by the steamship companies in order to obtain clearance, and to avoid the loss to which they would have been subjected if they had not paid them.

With reference to the period of fourteen days, which was allowed in which "to submit evidence," as the circular says, it was found by the trial judge that that period did not give a reasonable opportunity to the plaintiffs in error to obtain evidence from the port of foreign embarkation and to submit it.

The Secretary of Commerce and Labor imposed these fines, before Circular 58 was passed, merely on the transmission to him of the certificate of one of the Government's surgeons at Ellis Island. That was the only document that was before him. That document was sent to him with a letter from the Commissioner of Immigration at Ellis Island, transmitting the surgeon's certicate and recommending that the fine be imposed. But the only thing that would serve to indicate that there was in fact any disease, or that would serve to indicate anything with reference to the history of the disease, was this certificate of the Ellis Island surgeon. And after the issuance of Circular 58 the only change that was made was this: The surgeon's certificate was made out, stating his opinion as to the history of the disease. The Commissioner at New York (that is, at Ellis Island) then directed that $100 deposit be exacted, and if that deposit was not made within twenty-four hours the fine was immediately imposed. If the deposit was made within the twenty-four hours, then the matter was held in abeyance for fourteen days; and when that period of fourteen days expired, the papers were sent to Washington with the recommendation that the fine be imposed; and it was, in every case.

The only proof on which the Secretary acted was this certificate from the Government doctor at Ellis Island. There were certain letters transmitting the papers; but that was the only thing, if it can be called proof—and we claim that it cannot—that was the only document or evidence of any kind which served to show the existence of the disease or its history.

Those are the facts as found. On the basis of these we claim that the Secretary could not legally impose these fines without notice and without a reasonable opportunity to us to be heard, and that the exaction of these fines deprived us of our property without due process of law, in violation of the Fifth Amendment.

We also claim that under Article III of the Constitution, relating to the judiciary, and under the Fifth Amendment—under the "due process of law" clause of the Fifth Amendment—a judicial trial was necessary before the plaintiffs in error could be punished for a violation of section 9.

We also claim that the imposition of these fines was a criminal prosecution within the meaning of the Sixth Amendment, and that a jury trial was necessary, and that Congress had no power to authorize the Secretary of Commerce and Labor to impose a fine without legal proof. The section reads: that if he is satisfied, he may impose this fine; and the Court has before it the proofs on which he did actually act, if they can be called proofs, and the only thing was this certificate of the surgeon.

We have claimed throughout these cases that Congress had no power to direct these fines to be imposed without a judicial trial—that is, without a jury, or at least without a judge. But, assuming that Congress had power to authorize the Secretary of Commerce and Labor to impose these fines,

we claim that the exactions were illegal because we had no notice before they were imposed and no opportunity whatever to be heard.

I shall not, of course, take the time of the Court to argue the proposition that property cannot be taken as a fine for violation of a general statute unless the accused has notice and an opportunity to be heard. If that principle is not fixed, nothing can be said to be fixed. Either section 9 of the Immigration Act means that these fines could be imposed without notice, or it does not mean that they could be imposed without notice. If Congress did mean by section 9 that these fines could be imposed without notice, then it exceeded its authority under the Constitution. If it means that these fines could not be imposed without notice, then the Secretary of Commerce and Labor has violated the law imposing them. In either case the fines are illegal. This is one of those cases where I think we can start with a fixed legal proposition that the fines could not be imposed without notice, and the only question (if it is a question) is the question of fact whether or not there was notice. And that question, we claim, has been entirely disposed of by the findings, which are perfectly clear on that subject.

Coming, then, to the fines that were imposed after this Circular 58 had been promulgated—that is, after this notice about the fourteen days had been given—the difference which was then introduced into the procedure was merely this: This notice was given, saying that the alien had been examined, and that the result of the examination was to indicate that he was suffering from this disease, and that it might have been detected at the port of foreign embarkation if there had been a proper examination made, and the plaintiffs in error were allowed fourteen days to submit evidence, and told that they might have clearance if they deposited their $100.

We claim that that is not due process of law, for two reasons: First, it did not give us any hearing; and, second, it did not give us any reasonable and proper—practicable—opportunity to obtain evidence.

So far as the point that it did not give us any opportunity for a hearing is concerned, that is settled by the phraseology of the circular itself. Circular 58 was issued by the Department under a section of this Immigration Act; and if it is in accord with the Immigration Act it has the force of statute, and the Attorney General claims for it the force of statute. It does not purport to give any hearing. It merely offers the plaintiffs an opportunity to submit evidence. In a recent decision of this Court, in the case of *Londoner v. Denver,* you held that, even in a tax case, before property could be taken, there must be an opportunity to be heard. The phraseology of Circular 58 is perfectly clear, as showing that that opportunity was not given and did not purport to be given by the circular.

We come, then, to our second objection, and that is that there was no proper or reasonable opportunity for us to obtain evidence. The cases as to what is a proper opportunity to enable us to meet the charge against us do not lay down any fixed rule. The case which we cite, and which seems to us to come nearest to the subject, is one where Mr. Justice Brown quoted with approval from Chitty's Practice, where it states that the rule is that there must be an opportunity to the defendant to properly prepare his defense. If the notice does not give him that opportunity, it is not a proper notice within the rule.

What was the question to which a defense would be addressed? Why, this was the question: Would a proper examination at the port of embarkation (that is, the port of Southampton, England) have disclosed the existence of the disease when the alien was taken aboard there? How are the plaintiffs in error to meet that question? Suppose the plaintiffs in error had gone to an eminent physician in New

York and had requested his opinion on the subject of the condition of this alien, and had submitted that to the Secretary of Commerce and Labor. The Secretary would have then had before him the written opinions of two physicians—one the Ellis Island surgeon, and the other the local practitioner in New York, one of whom would presumably say that the alien did have trachoma when he embarked, and the other would say that in his opinion the alien did not have trachoma when he embarked. How shall the Secretary decide between those two opinions of two physicians? Why, one of them is his official adviser, the man designated by law to inform him on these technical subjects. It is not a question of the private estimate which the Secretary may put on the standing of these two physicians. It is Government business. And it seems to me perfectly clear that any executive official of the Government, put in that position, would unhesitatingly and invariably, and almost, I think, as a matter of duty, take the opinion of the one who had been picked out and designated by the Government as his official adviser.

But if the steamship company could send to the port of embarkation—could send to Southampton and obtain evidence that there had, in fact, been an examination of the aliens made there before they were taken aboard; that that examination was, in fact, a careful one and was made by competent medical men there, and if it could be shown that the alien, when he was taken aboard at Southampton, did not have the disease—there would be positive evidence as to the fact, which would overcome the inference, the opinion, expressed by the Government surgeon at Ellis Island.

So it would have been a perfectly vain thing for the steamship companies to have undertaken to meet the certificate of the Government's surgeon by any local medical opinion in New York. The only proof that they could get which would amount to anything on this issue before the Secretary was proof as to the fact of what happened at Southampton, England, when the alien embarked.

We have in the history of the Department of Commerce and Labor what seems to me conclusive corroboration of that argument; and the Department is certainly familiar with this subject and with the question which would be presented to the Secretary. Since these fines were imposed this Circular 58 has twice been amended. The first amendment was that these words offering us fourteen days in which to submit evidence were changed to read, not "if you desire to submit evidence," but "if you desire a hearing," which we had not been given before. The second amendment was to extend the period from fourteen days to sixty days.

If the certificate of a local physician at New York would have met the question which was presented to the Secretary, that could just as well have been obtained in fourteen days as in sixty days; and there was no need of extending that time if evidence obtainable in New York would have met the situation. The fact that the Department of its own motion extended the time shows, as we think, conclusively, that the only way that question could have been met is just as we argue—that is, by actual proof from the port of embarkation as to what the nature of the examination was.

So far as concerns the question whether fourteen days gave us adequate opportunity to obtain proof from Southampton, England, the findings settle that. It is held that the fourteen days is not sufficient opportunity.

The Attorney General argues, in his brief, for certain conclusions based on the statement that we did not attempt to offer any evidence. We did not. So far as there is any suggestion of our treating the Government's invitation with disrespect, I think that that would not be a proper inference from our conduct. We had two reasons for not attempting to offer any evidence on these subjects. The first was that it would have been a vain thing, for reasons which I have already explained. The second reason was that, throughout these cases, we have claimed that the Secretary was without

jurisdiction to impose these fines; that they could only be imposed on a judicial trial; and we did not wish in any way to waive our right to insist on that defect of jurisdiction.

It is implied in the brief of the learned Attorney General, if not directly argued, that we might have asked for, and obtained, an extension of time to submit evidence.

Either Circular 58, under which the notice was issued, was or was not authorized by law. If it was not authorized by law, then all these fines under Circular 58 are illegal. If it was authorized by law, then by the terms of the statute it has the force of law, and a Government official could not have extended our time without violating the law. I fail to see how the constitutionality of any act can be considered if the Court can take into consideration, not what the act provides, but what some public officer may do in violation of the act. Obviously the phraseology, the terms, the provisions of the act must be considered; and it is not permissible to indulge in speculations as to what an officer may do if he violates it.

But this whole question has been before the Court in cases to which we refer, and more particularly in the case of *Roller v. Holley*, which we cite. As Mr. Justice Brown said there, the constitutional right of the citizen to due process of law must rest on something more substantial than mere grace or favor.

Mr. Justice HOLMES: What case was the last one that you just referred to?

Mr. BEERS: *Roller v. Holley*. It is cited in our brief, your Honor.

The CHIEF JUSTICE: What is the volume?

Mr. BEERS: 176 U. S. It is cited on page 30 of our principal brief.

We claim that section 9 of the Immigration Act of 1903 is unconstitutional, because a fine cannot be imposed without a judicial trial, by reason of the provisions of Article III

of the Constitution relating to the judiciary, and by reason of the provisions of the Fifth Amendment relating to due process of law; that is, a fine imposed under section 9 cannot be imposed by due process of law unless by judicial process, as we claim.

The powers of Congress with respect to the admission of aliens themselves are not involved in this case at all. The act of 1903 is a long act. It has some thirty-nine sections. The section which deals with the alien himself is the second section. That provides that if, at the time he presents himself for admission, he is suffering from a dangerous contagious disease, he shall be deported—deported at once; not allowed to land. He stands at the frontier, and is examined and found not admissible, and is sent away. That examination which is had under section 2 has nothing to do with the history of the disease in the past. It is only concerned with the presence of the disease in the alien at the time he applies for admission; and if he has it, he cannot land. So far as the Immigration Act is a general protection to the people of the United States, that protection is given by section 2, which sends the alien away. So far as this act is a sanitary law, the sanitary protection is given by section 2, which does not permit the alien to land at all. Section 9 takes up an entirely different subject, and that is this subject of the competency of the medical examination at the port of embarkation in the past; and it punishes the ship-owner if that has not been a proper medical examination. In this case the punishment is imposed on an American citizen and on a British corporation.

In this long Immigration Act of 1903 there are a number of provisions which do not purport in any way to be turned over to executive officers to be carried out. There are provisions binding on ship-masters which create misdemeanors punishable by fine and imprisonment. The act does not purport to turn the enforcement of those provisions over to executive officers. That is obviously given to the courts, and they are, in fact, enforced by the courts; and by this act of

1903 concurrent jurisdiction is given to both the circuit court and the district court of all cases, civil and criminal, arising under the act.

When an alien applies at our shores to enter, he is not claiming any constitutional right. Even if he has a right under a treaty, that is a mere treaty right, which, obviously, may be taken away by a subsequent statute. It is given with the presumption, given with the understanding, that a subsequent statute may take it away.

So far as regards the application of the alien to enter, and so far as regards his being admitted, Congress has complete and almost arbitrary powers in reference to his admission, because it is not dealing with any constitutional right. He may be excluded for any reason which Congress deems sufficient. But if in dealing with the alien—if in dealing with the alien himself—Congress undertakes to take away his liberty or his property, then it enters into a different field—that is, it enters into the field of constitutional rights—the constitutional right of a citizen, the constitutional right of the subjects of a friendly power who happen to be within our borders. And as soon as it enters that domain of constitutional rights, there, obviously, it is limited by the Constitution.

A good example of that was presented by the case of *Wong Wing v. The United States*. That was a Chinese case. Congress had provided that certain Chinese persons found within the United States should be excluded, and that before they were excluded they might be imprisoned not exceeding a year, and then deported. Obviously Congress had full power to enact a law saying that the Chinese should not come. It had full power to punish the Chinese who were here and who violated that law. Thus far it was within its powers. But it overstepped its powers when it provided that that imprisonment of the Chinaman might be imposed without judicial process, because there it entered the domain of the constitutional right even of a Chinaman who was here as the

subject of a friendly power. And that was the basis on which this Court disposed of the *Wong Wing* case. The Court there commented on the full power of Congress to admit the Chinaman or to order his removal from the country or to order him to be taken away from the country if he was found to be improperly here. But then, coming to this question of taking his liberty or his property, the Court held:

"But when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor, or by confiscating their property, we think such legislation, to be valid, must provide for a judicial trial to establish the guilt of the accused."

I am not overlooking the fact that in the *Wong Wing* case the Court was considering the question of imprisonment—that is, of an infamous punishment. But the Fifth Amendment of the Constitution applies just as well to the taking of property without due process of law as to the taking of liberty without due process of law. Life, liberty, and property are grouped together, and neither one of the three can be taken without due process of law. So, although that case did relate to imprisonment, I think we are justified in presuming that this Court meant precisely what it said when it said that when Congress sees fit to promote its immigration policy by subjecting the persons of aliens to infamous punishment, or by confiscating their property—that is this case—there must be a judicial trial.

The facts here are stronger than they were in the *Wong Wing* case, because in the *Wong Wing* case Congress was dealing with an alien, and here Congress is dealing with third parties—a citizen and a subject of a friendly power.

As I understand it, under this head the test of whether Congress could empower an executive officer to act is whether Congress could itself act. Congress can regulate the admission of aliens. It can itself determine whether or not they are to come in. It can itself determine how the facts bearing on their admission shall be ascertained; and so

Congress has power to authorize an executive officer to perform all those acts which Congress itself might have performed. It can authorize an executive officer to examine the alien and to ascertain the facts on which his application depends; to examine him physically, and if he is found not to be admissible, it can authorize him to be deported. But Congress has no power of punishment except by passing a general statute, which shall then be turned over to the usual legal machinery of the Government for enforcement. That your honors laid down very clearly, I think, in the case of *Kilbourn v. Thompson*, which was a case where a witness had been guilty of contempt before a congressional committee, and Congress had undertaken to punish him, and he reviewed it on *habeas corpus*. The Court there held, speaking of the Constitution:

"No general power of inflicting punishment by the Congress of the United States is found in that instrument."

That is, in the Constitution.

"It contains, in the provision that no 'person shall be deprived of life, liberty or property, without due process of law,' the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this Court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established."

In every immigration case which has been cited by the Government Congress has delegated to an executive officer the power to perform an act which Congress itself could have performed. In this case Congress has undertaken to empower the Secretary of Commerce and Labor to perform an act which Congress itself could not have performed under this very decision. This is a legislative attempt to make the mouth of a stream higher than the source.

Congress has power to determine, for example, whether or not a certain bridge is an obstruction to navigation, and it may authorize the Secretary of War to determine that same question. That was the statute which your Honors upheld in the Union Bridge case. Congress has full power with respect to the Indian tribes and the public lands. It may confer that power on the Secretary of the Interior. It has full power with reference to the issuance of patents. It may give that power to the proper officer in the patent department, the Commissioner of Patents. It has full power, with reference to national banks, to determine the conditions on which national-bank stock shall be issued. Consequently, it can authorize the Comptroller of the Currency to determine when subscriptions can be called for if there is an impairment of the capital. Congress itself could have done it, and it can authorize the Comptroller of the Currency to do it. Congress has full power to determine who and what aliens shall enter, and how their application to enter shall be passed upon, and it can confer that power on officials of the Bureau of Immigration. Congress has full power to determine what shall properly be carried in the mails, and it can confer that power on the Postmaster General. But Congress has not the power to punish citizens for the violation of a general act, and that is the power which it has attempted to confer on the Secretary by this section 9.

The further points which arise in this case under the Constitution will be argued by Judge Choate, but I should like to state briefly to your Honors what we claim with respect to them.

The Attorney General in his brief refers to the cases where it has been held that Congress had power to authorize executive officers to act, and they are referred to as though with the suggestion that it occurs in these cases, and therefore it follows that Congress has a general power to so authorize executive officers, which does not follow. In fact,

the decision of the Court in the *Wong Wing* case shows very clearly that that cannot be so, for there Congress undertook to authorize the Commissioner to punish, and the Court held that it was not due process of law, because there must be a judicial trial.

In every case where it has been held that there may be non-judicial process there has been a special basis on which the Court has upheld the power of Congress; and where there is not the basis the power has not been upheld.

Those cases fall into a few groups. One of them, and perhaps the best known, is cases where, at an early period in the development of our institutions, it was recognized that there was a necessity for non-judicial methods, and on the basis of that necessity a practice had grown up of dispensing with judicial process. Under this come the powers which Congress may give with respect to the collection of revenue and with respect to the enforcement of the police laws.

The necessity of having those laws enforced without judicial process was just as well recognized when our Constitution was framed as it is now. It is commented on by the framers and commented on in the "Federalist." And when the courts have held, as they have (notably in the *Hoboken Land and Improvement* case), that property may be taken in such circumstances without judicial process, that is simply applying the law of intention to the interpretation of written instruments—that is, the court charged with the duty of interpreting the Constitution is, so far as it can, putting itself in the position of the framers.

There is another class of cases to which I have already referred, and that is the cases where Congress itself could act; where it had full power, as in the case of patents, as in the case of Indians, as in the case of the public lands, where Congress may itself delegate the power which it has.

There is a third class of cases, where individuals have entered into special relations with the Government, by reason of which Congress has this power to dispense with judicial process. For example, a contractor contracts with the Post-

master General for the carriage of the mails. That contract is made by the Postmaster General under a statute which the contractor is presumed to know, and it provides that if the contractor does not carry the mails and does not fulfil his obligations as they are laid down by the contract, the Postmaster General may deduct from his pay or may impose penalties on him. The contractor has made his contract with full knowledge of the provisions of the statute in that regard. Just so a soldier or a sailor may lose his pay for violation of duty, or an employé of a Department. It is part of their relations with the Government. So a person who buys national-bank stock buys with the full knowledge that the statute under which the stock is issued authorizes the Comptroller of the Currency to call for payments if there is an impairment of capital. All these people enter into special relations with the Government which give this right to dispense with judicial process.

I will only call your Honor's attention to one more claim of the plaintiffs in error; and that is that Congress has not the power to authorize the Secretary of Commerce and Labor to impose a fine without any legal proof whatever that the offense has been committed. The Secretary here acted on a doctor's certificate, not sworn to, the witness not being present; and it is claimed (and apparently that is what the meaning of the section is) that if the Secretary of Commerce and Labor is satisfied, if a public official is satisfied that an accused person is guilty——

Mr. Justice WHITE: Why do you say "no proof whatever" if it was on a doctor's certificate?

Mr. BEERS: I say it is not proof; it is not under oath.

Mr. Justice WHITE: Could not Congress pass a law dispensing with an oath in giving testimony? Would that be unconstitutional?

Mr. BEERS: Under certain circumstances, not affecting the constitutional right, possibly it could.

Mr. Justice WHITE: Suppose Congress should pass a law tomorrow saying that there should be no oaths administered in Federal courts in the trial of cases—suppose that case: Do you think that all trials in Federal courts would be unconstitutional?

Mr. BEERS: No; I do not claim that, your Honor. But all that the Secretary acted on was this written opinion of a doctor.

Mr. Justice WHITE: That is another thing.

Mr. BEERS: Which is given no special force by the statute. It is given special force on the question of deportation, but not otherwise. But as to any question of the guilt of the steamship company, it has no special force; and we claim that Congress had not the power to authorize the Secretary to impose a fine on the basis of that certificate.

ARGUMENT OF HON. WADE H. ELLIS,

Assistant to the Attorney General, on Behalf of the Defendant in Error.

Mr. ELLIS: If the Court please: The most important consideration in this case is a full and clear understanding of the facts. When that is had I will submit that this statute of Congress and the practice of the Government officials under it need no further defense.

Something like a million immigrants a year are coming into the United States. Not that many are staying here, but something like that number annually are coming here. They are coming in all sorts of ships, from the first-class liner to the tramp vessels that pass in the night. They are coming from all the ports of the world. The most dangerous characteristics which any such immigrants may possess are extreme poverty, criminal tendencies or disease. Congress has been battling with this question for a great many years. The act whose constitutionality is challenged in this case is the final result (so far, at least) of the experience and the judgment of Congress and of the Department that has to do with the practical operation of these immigration laws.

I want the Court to hear that statute read again. Section 9 is as follows:

"That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel, to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease."

In the first place it is made unlawful to bring any alien here afflicted with a dangerous contagious disease, no mat-

ter what may have been his condition when he embarked on the other side of the sea.

"And if it shall appear to the satisfaction of the Secretary of the Treasury"——

Now "the Secretary of Commerce and Labor"——

—"that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the Collector of Customs of the customs district in which the port of arrival is located the sum of $100 for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such fine imposed upon it remains unpaid."

Section 22 of the act provides that the Commissioners General of Immigration "shall establish such rules and regulations (omitting a portion of it), as he shall deem best calculated for carrying out the provisions of this act."

If your Honors please, there are cited in the brief for the Government the findings of the Senate Committee on Immigration which had before it the question of the passage of this act; and of those findings I ask the Court to permit me to read a portion. I read from page 35 of the Government's brief:

"Notwithstanding the explicit prohibition of the present law"——

That is to say, referring to the condition, now, before the enactment of section 9 and section 22 of the Immigration law——

—"it has been found impossible to prevent the steamship companies from bringing diseased aliens to our ports. Once on this side, every argument and influence that can be used

is resorted to, either to effect the landing of such aliens or their treatment in the hospital as a preliminary to such landing."

"Once on this side!" Congress had in mind the "ounce of prevention" rather than the "pound of cure." What Congress desired was to deter the steamship companies from taking on board, on the other side, aliens who, if subjected to a competent medical examination, would be found to be afflicted with a contagious or dangerous disease.

"Expert medical testimony,"—

Says the committee,——

—"is secured to attack the diagnosis of the examining surgeon and even to question the contagious nature of the disease. Pitiable stories are told of the separation of parents from young children to induce officers to relax in the discharge of their plain duty. Great charitable organizations intervene, and even political influence is invoked for the same purpose, the steamship companies themselves, either covertly or openly, displaying a spirit of resistance to the law. If all of these obstacles to the execution of the law fail of their purpose, and the alien afflicted with tuberculosis, favus, or trachoma is sent back, still by the willful or indifferent defiance of this sanitary law the design sought by its passage is defeated, for hundreds may possibly have been—indeed, almost certainly have been—exposed to the disease in the steerage on the way over, may have been affected by it and landed before it has reached a stage of development sufficiently advanced to be detected by the medical inspector.

"Section 10 of the measure under consideration"——

Which in the final enactment became section 9 of the law——

—"therefore imposes a penalty of $100 to be imposed by the Secretary of the Treasury for each case brought to an American port, provided in his judgment the disease might have been detected by means of medical examination at the port of embarkation. This sufficiently guards the transportation lines from an unjust and hasty imposition of the

penalty, insures a careful observance of the law, and leaves in their own hands the power to escape even a risk of the fine being imposed, since they can refuse to take on board even the most doubtful case until certified by competent medical authority to be entirely cured."

Now, if the Court please, looking for a moment at the design and purpose of Congress, at the thing to be accomplished, it seems clear that the imposition of this penalty of $100 was, in the judgment of Congress, just enough to deter the steamship companies from putting on board the afflicted alien and not enough to defeat the object designed. If the penalty had been a $5,000 fine and imprisonment for a year, and a crime had been made of it, that might have been prohibitive in character. It might have resulted in the steamship companies coming to American ports giving up the business altogether, which would have taken it on to the Canadian lines, and would have vastly increased the cost of protecting the health and safety of the people of this country from the afflicted aliens.

If the Court please, notwithstanding what has been said about the findings of the trial judge, there is no dispute in this case and never has been as to what the facts are. It is true that the court below found as a finding of fact—at least, it is so claimed by my brother on the other side—that there was no opportunity to be heard, and no notice; and that even after the establishment of the regulation referred to as Circular 58, the period of fourteen days did not constitute a reasonable or a sufficient opportunity to be heard. I hardly think that these conclusions of the court below will be regarded as findings of fact which conclude this Court from looking at the record and at the other findings of the court below clearly not consistent with such conclusions. Certainly a finding of the court below that fourteen days was not a reasonable time within which to produce testimony is not a finding of a fact. It is a mere legal interpretation of a fact, and the court below might with equal propriety have made a "finding of fact" that there was no due process of law.

Since the enactment of this statute, in 1903, about 10,000 immigrants afflicted with dangerous or contagious diseases have been sent back from American ports. During that time something like eleven to twelve hundred penalties under this statute have been imposed. There are involved in this case and awaiting its determination six or seven hundred cases where the money under this section 9 has been paid, involuntarily and under protest, and where suits will be brought to recover it if, in this case, the judgment of the Court should be that the court below should be reversed.

It is to be further remembered, also, as to these findings of the court below, that his Honor Judge Hough was of the opinion, and upon this based his decision, that no hearing and no notice of any character whatever was required; that this exaction of $100 was a mere regulation of the right or the privilege of clearance from the ports of the United States. Much can be said, of course, in favor of that view as being conclusive of this whole case. But it is so much better said in the opinion than I can say it that I leave to the Court the reading of that opinion, which is made a part of the record in case 509.

The only difference between the practice before and after Circular 58 was this: After Circular 58 there was a fourteen days' notice, formal notice; and the steamship companies were required, in the meantime, by a regulation of the Department, to satisfy the Collector, by putting up $100, so that if the fine was imposed the ship could not get away to some other port and go scot-free of the payment. It must be remembered, of course, that there are all sorts of ships that come in. Sailing vessels from Cuba and the West Indies, etc., are among the number; and it is important that one regulation should fit them all, and important that the Government should be secured in the payment of this $100 in case it should thereafter be imposed.

Mr. Justice HOLMES: Do I understand that the only sanction of this fine is the refusal of the clearance? I did not have that matter in mind while you read the statute.

Mr. ELLIS: That is the only way in which it is to be collected.

Mr. Justice HOLMES: The only legal method by which the fine can be enforced is the refusal of a clearance?

Mr. ELLIS: Yes. I suppose, of course, if the Court please, that if the vessel got away, an action would lie as a debt for the collection of the fine.

Mr. Justice HOLMES: That is just what I wanted to get at. It might conceivably stand one way if the only thing that Congress undertook to do was to impose a condition on the granting of a clearance, and it might be a different proposition if it affirmatively undertook to create a debt.

Mr. ELLIS: The court below, as I was saying a moment ago, regarded it as a mere condition upon the right of clearance.

Mr. Justice HOLMES: And as not imposing a debt?

Mr. ELLIS: Although, in the opinion of the court below, the remark is made that if this is collectible otherwise, it is collectible as a debt.

The way this practice went on at the port of New York was about as follows: The immigrants land at Ellis Island. They go in streams down the gangplank and up the stairway and into the landing building. At the top of the stairway there is, on either side, a medical officer from the Marine Hospital Corps. They stand there very much as ticket-collectors at a theater, or collectors at a toll-bridge, watching these persons as they come through, expecting, of course, first to exclude all those that show any question of doubt as to their physical condition. These men are experts; they become such, of course, especially in the detection of such diseases as favus (a familiar disease of the scalp), or of tuberculosis, or of trachoma, a disease of the eyes—the sort of disease which is involved in these cases. Those that, upon first casual inspection, such as this, are rejected are turned aside and asked to step into the room of the medical division of the Immigration Department. There a fuller and a thorough investigation and examination takes place. Then,

if it is determined that any one of the aliens in any given case is afflicted with a contagious and dangerous disease, he or she is sent to the immigration hospital on the island. And at that point, long before any fine is imposed, long before any papers go to the Commissioner General, long before any consideration is given to the subject by the Secretary of Commerce and Labor, on the day of the arrival of the ship, at the very moment that it is determined by the medical officer that a particular alien is suffering from a contagious or a dangerous disease, a notice to that effect is sent to the steamship company—a notice giving the name of the alien, the ship by which he arrived, and the nature of the disease. In the cases in this record there intervened, respectively, six, seven, ten, and eighteen days between the delivery of this first notice to the transportation company and the actual imposition of the penalties. But more than this, the steamship companies themselves have on the ground their own agents. They pay, if the Court please, the hospital expenses of all these aliens that are sent to the hospital. The manifest of the ship is open to their inspection. All the records of the medical division, as the testimony shows, are open to their inspection.

Mr. Justice HOLMES: I thought you said there was an opinion somewhere in this record.

The CHIEF JUSTICE: There is. It is at the end, page 101.

Mr. Justice HOLMES: Oh, yes; I see.

Mr. ELLIS: It is at page 101, I think.

Mr. Justice HOLMES: I see; it is added on.

Mr. ELLIS: In the record of case No. 509, at page 43, this testimony occurs. It is stipulated, if the Court please, that the testimony in each of the cases shall be applicable to all the cases. An officer of one of the steamship companies was asked this question:

"Have you at any time, either before or after the issue of Circular 58, instructed the company's representative at Ellis Island to ascertain and report whether any special certificate had been filed with respect to any immigrants coming on

your line? By special certificate I mean a certificate that the alien arriving on one of your steamships was afflicted with a dangerous contagious disease."

That was objected to by counsel for the steamship company. The objection was overruled, and the answer was:

"Yes, I have; I cannot remember the exact date."

The next question was:

"Approximately?"

The answer was:

"Well, since the fines were instituted for dangerous and contagious diseases, he was instructed to report such cases; he was not so instructed prior to the imposition of the first fine, covered by Exhibit 1; I cannot remember whether he was instructed prior to the imposition of the fine covered by Exhibit 2, but naturally I should think he would do so."

So that these plaintiffs in error who claim that they had been given no opportunity to be heard, and no notice, not only were given a notice before the imposition of the fine, at the time that the medical officers determined that the alien was afflicted with the contagious disease, but their own agents were instructed to get that information and to present it to them. They not only had notice, if the Court please, but they had knowledge.

I now come to the findings of the court below, which clearly contradict the conclusion that there was no notice or opportunity to be heard.

Among the findings to which my friend did not call the Court's attention (they were findings asked for by the Government and given by the Court), I read from pages 6 and 7 of the Government's brief these findings:

"On the respective days of arrival of the respective aliens mentioned in the complaint, the surgeon in charge at Ellis Island sent notices which were addressed to and received by the plaintiff,"——

That is a finding of a fact.

—"and which reported that the respective aliens had been placed in the hospital with a disease of the eyes."

The next finding is:

"At all the times mentioned in the complaint the plaintiff had in Ellis Island its own representative, whose business took him regularly there, and who inspected and had free access to the records of the hospital to which the said aliens were removed, and to the other records at Ellis Island, and who could have reported to the plaintiff the sending of the respective aliens to the hospital, if they had so desired, or so been instructed by plaintiff."

As a matter of fact, from the testimony I have just read a moment ago, they were so instructed by the ship companies.

The court below goes on in his findings:

"From the surgeon's notices above mentioned and from the plaintiff's representative above mentioned and from the previous impositions of penalties the plaintiff knew or might have ascertained that the penalties prescribed under section 9 of the act of March 3, 1903, would in all probability be imposed in respect of the said aliens."

The last finding is this:

"At none of the times referred to in the complaint, and at no other time did the plaintiff ask for any hearing or offer to submit any evidence or ask for any postponement of imposition of penalty or for any extension of time for obtaining or submitting evidence. Nor did it at any time send, or ask leave to send, a physician to Ellis Island for examination of any alien, which was always permitted."

Now, if the Court please, the plaintiffs in error are here complaining chiefly that they had no notice and no opportunity to be heard. The facts are that they had full notice, and that the only reason they were not heard was because they did not offer themselves with anything to say. I submit, if the Court please, that there is a great difference be-

tween an opportunity to be heard and an invitation to speak. It is the former and not the latter that is a requisite of due process of law. And I submit, further, that there is a difference between an express grant of an opportunity to be heard and an express denial of an opportunity to be heard; and it is the latter only which violates the requirements of due process of law.

If the Court please, with this statement of the facts and of the circumstances upon which this statute was passed, I submit the first proposition of the Government. That is, that this whole subject of immigration is one peculiarly within the plenary power of Congress; that it includes not only the alien, but the ship that brings him, and the company that owns the ship. No one has a vested right either to come to this country or to bring another here. This cannot be and has not been anywhere better stated than in the Nishimura case in 142 U. S., page 659. And at the outset of this case it is stimulating to read this clear pronouncement of a great and wholesome doctrine.

"It is an accepted maxim of international law,"——

Says this Court,——

—"that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States this power is vested in the national government, to which the Constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the President and Senate, or through statutes enacted by Congress, upon whom the Constitution has conferred power to regulate commerce with foreign nations, including the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States. The supervision of the admission of aliens into the United States may be entrusted by Congress either to the Department

of State, having the general management of foreign relations, or to the Department of the Treasury, charged with the enforcement of the laws regulating foreign commerce; and Congress has often passed acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the Secretary of the Treasury, the collectors of customs, and to inspectors acting under their authority."

Then follow in our brief the cases upon the general subject of immigration. First is this Nishimura case, where the Court refused to review the action of the administrative officer, although it was not shown that the inspector took or recorded any evidence whatever. Next in the Japanese Immigrant Case, in 189 U. S., although no formal notice had been given, and the alien could not understand the language in which any hearing took place, the Court refused to disturb the findings of the executive officers. In the Wong Wing case, to which attention has been called, this Court found that Congress, if it granted to executive officers (which it had a right to do) the power to determine whether or not the alien was entitled to admission, could delegate the determination of the question of citizenship to executive officers, and their decision would be final and conclusive. But in that case Congress undertook to do more than that, and to authorize an executive officer to sentence a Chinaman to a year at hard labor; and the Court found that this was a punishment for an infamous crime under the Fifth Amendment, and was not a regulation of the business of immigration. There was no need for any such additional means of enforcing the immigration laws. The whole purpose of the law in that instance was satisfied when the alien was sent back home; and to keep him here for the purpose of punishing him was not a regulation of his coming.

In the case of *Turner v. Williams*, 194 U. S., 279, the anarchist case, this Court again repeats the language used in the Nishimura case—that this control of Congress (whether

as an incident of sovereignty or in the exercise of the power granted in the commerce clause) over immigration includes not only the alien, but, as the Court said, "includes the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States."

So, in the case of *Buttfield v. Stranahan* (192 U. S., 470), the case where tea was destroyed by an executive officer without any notice and without any hearing, the Court held that that question was one peculiarly within the domain of Congress, and the determination of it might be left appropriately to executive officers.

It appears, in the last analysis, that the plaintiffs in error here really base their claim that they were entitled to more consideration than they got upon the fact that they got more consideration than they were entitled to. In other words, if this statute had provided that every steamship company bringing aliens to this country should forfeit and pay $100 per capita on all aliens, and the number should be determined by the officers of the American Government counting them as they landed, no complaint would have been made. If this statute had read that the steamship company shall pay $100 for every sick alien, for every alien afflicted with a contagious disease, and the fact of his condition shall be determined by the judgment of the landing officers of the American Government or the medical officers in charge, no complaint would have been made. But because Congress did less than that, because Congress did not exercise any arbitrary power, because Congress did not attempt to punish the ship companies for the mere bringing of aliens afflicted with disease, but only for putting on board abroad an alien who, if competently examined, would have been shown to be afflicted with disease, because Congress gave to the Immigration Department the right to fix rules and regulations for the enforcement of statute, and finally, because that officer, in the adoption of, and in the practice under, those rules and regulations so fixed by him, gave to the steamship companies

notice of the fact that there had been a finding that certain aliens were afflicted with contagious disease, and gave an opportunity for the presentation of testimony, therefore this proceeding which might otherwise be regarded as a mere regulation of immigration becomes the punishment of a heinous crime, and there must be a trial by judge and jury!

That brings me, if your Honors please, to the discussion of the first objection they make, and that is that this offense is a crime or a criminal prosecution, and that therefore, under article 3, section 2, and under the Sixth Amendment of the Federal Constitution, they are entitled to a trial by jury.

I believe it is safe to say that if Congress in this act had used the word "penalty," "license," "fee," "exaction," "imposition," or any other word, except inadvertently in one place the word "fine," this case never would have arisen. But surely there is no magic in a word by which the essence of things can be changed. My friends on the other side seem to proceed upon the theory that because a crime is frequently followed by a fine, therefore a fine is always preceded by a crime. As Mr. Lincoln once observed in one of his debates with Senator Douglas, "Logic of that sort would prove that a horse chestnut is a chestnut horse." The offense itself, the way in which it is characterized—not its place in the statute, not the language used—designate its true quality and character. And this offense of not having made a medical examination abroad is not denounced as a crime. It is not stigmatized in any way as importing moral delinquency or turpitude. The Court below, in discussing the contention that this is a crime, uses these very apt words—I am reading from the Government's brief at page 21:

"It would, I think, puzzle the astutest attorney, to draw open to conviction an indictment on this section of the act. It would be necessary to accuse a person, yet the 'fine' is imposed on a 'ship,' while on conviction the court would be

obliged to direct the payment of $100 to the collector, a method of collection hitherto unheard-of on the criminal side."

But more than that, the court below might well have called attention to the fact that one of the most important ingredients of a crime is entirely lacking here; and that is, it appears from this statute that if the $100 exaction is once paid, although the ship company, its agents, officers, and all of them together may have conspired to commit the offense, everybody goes scot-free. The payment by one absolves all the others. It is, therefore, not a crime, but a fee or a penalty; and the statute is satisfied when the $100 is paid. As suggested by my friend on the other side, it may really best be likened to those exactions which are permitted to be made by executive officers in the administration of the tariff laws, the postal laws, the internal revenue laws, the national banking laws, and the like. Take the tariff laws, for example: One who makes a misrepresentation as to the value of goods imported is fined—fined by an executive officer of the Government—in double the amount of the tariff. That is a penalty imposed for the violation of that act. So with the postal laws, and many others. All the cases on this subject are cited in the brief—the Union Bridge case (204 U. S., 364), the Lawton *v.* Steele case (152 U. S., 133), the fish-net, the tea case, and the leading case of *Murray's Lessee v. Hoboken* (18 Howard, 272).

But, even aside from the matter of immigration or tariff or revenue or postal laws, there are certain mere petty offenses for which, even if this were not a subject-matter peculiarly within the control of Congress, a fine or penalty may be imposed without a jury and without a court. I refer, of course, to the Schick case in 195 U. S.; and the whole matter was well summed up in Callan *v.* Wilson, the conspiracy case, in 127 U. S., where it was said:

"According to many adjudged cases arising under constitutions which declare generally that the right of trial by

jury shall remain inviolate, there are certain minor or petty offenses that may be proceeded against summarily and without a jury."

If it is considered for a moment what the testimony would be here, the Court can see the wisdom of sanctioning in Congress the power to submit this question to either administrative or executive officers rather than to a court or a jury. The examination is made by medical officers. The best testimony as to the condition of the alien when he landed and when he got on board abroad is the opinion of doctors. That certificate, sent to the Secretary of Commerce and Labor, which is said here to be no evidence at all, is the very best evidence that could possibly be conceived of in answer to the question as to whether or not a certain alien had a contagious disease—the opinion of the physician who examined him. No other testimony would be of any consequence, unless it be the testimony of the alien himself. And yet it is admitted by our adversaries that with respect to the alien, executive officers can determine absolutely what is the matter with him, if there is anything the matter, and send him back home without any opportunity to be heard before a court and jury; but with respect to the steamship company that brings him here, the very question that the officers determine with respect to the alien must, with respect to the steamship company, be submitted to a court and jury. And if the court and jury in the steamship case determined that the man had no contagious disease of any kind, either when he landed or when he got on board, and the executive officers of the Department in the case of the alien determined that he did have the contagious disease and sent him back, you would have two judgments—one finding that he had no contagious disease and therefore ought to be permitted to stay here; the other finding that he did have a contagious disease and therefore ought to be sent back home. All of which, I think, clearly illustrates the importance of reaffirming the proposition laid down in

the cases cited, that this control of immigration includes not only the aliens brought over, but the ships that bring them.

(The Court thereupon adjourned until tomorrow, Tuesday, January 12, 1909, at twelve o'clock m.)

WASHINGTON, D. C.,
TUESDAY, *January* 12, 1909—12 o'clock m.

The Court met pursuant to adjournment.

Present on behalf of the plaintiffs in error, Mr. CHOATE and Mr. BEERS.

Present on behalf of the defendant in error, Mr. ELLIS and Mr. GROSVENOR.

ARGUMENT OF HON. WADE H. ELLIS—Continued.

Mr. ELLIS: If the Court please, I shall conclude very briefly this morning.

To sum up the contentions as presented by the Government up to the time of the adjournment of Court yesterday, they may be put as follows:

First, this is neither a crime nor a criminal prosecution, and therefore no jury is necessary.

Second, no notice or hearing is necessary, because this is a mere regulation of the business of bringing immigrants to this country; and Congress may impose such conditions as it sees fit upon that privilege.

Third, no notice or hearing is necessary because this statute and the regulations under it are a mere condition of clearance; and Congress, having plenary power over the right of ships to land or to clear, at and from the ports of the United States, may impose such conditions upon that right as it sees fit.

But assuming, if the Court please, for the sake of the argument, that notice and hearing, or notice and an op-

portunity to be heard, was necessary in this case, we submit that there was in fact (not merely in the legal interpretation of the facts) full notice and ample opportunity to be heard. This was true not only before Circular 58, but doubly true after Circular 58. Before Circular 58, in every instance in the record, there elapsed, between the time that notice was sent to the ship companies that particular aliens brought over by them were afflicted with a dangerous or contagious disease, as I say, from six to eighteen days; and the ship companies, through the instructions to their agents, through the accessibility of the records of the hospital at Ellis Island, and the manifests of the ships themselves, and the records in the medical division, had full opportunity to know all the proceedings, none of which were conducted in secret, all of which were open to them to present evidence at any time they chose. After Circular 58 they had a formal notice of fourteen days. Now, their only complaint about this fourteen days' notice is, first, that it was not a sufficient time within which to get their evidence, because of the fact that it was necessary to get the testimony of the certifying physician on the other side of the sea. If the Court please, fourteen days is the time that elapses between notice of trial and trial in the Federal and State courts of the city of New York, as I understand; and surely no litigant in those courts who had a witness, say, at Calcutta or Bombay, the chief witness necessary to his defense, could ignore the proceedings of the Court, and, after judgment had gone against him, claim that a constitutional guarantee had been violated, and that he had not had due process of law because it was impossible for him to have gotten the only witness necessary to his defense from the other side of the world within fourteen days. The time given is intended to meet all cases; not exceptional cases. These ship companies were in New York. There their representatives were; there the proceedings were going on. There the immigration officers were taking the testimony such as was taken. There the medical division was. There the hospital was located; and these

companies were paying the expenses (as I said yesterday) of maintaining the aliens afflicted in the hospital. All they would have had to do was simply to have asked for an opportunity to be heard, proffering some testimony, stating that they could show by the testimony or certificate of the physician at Southampton in these cases that these immigrants were in fact examined and found not to be afflicted with any disease at the time of their embarkation.

But they say, further, that this fourteen days' notice was not an opportunity to be heard, but that in form it was something different; it was an opportunity to present evidence. I am unable to follow the learned counsel for the plaintiffs in error in refining distinctions between an opportunity to be heard and an opportunity to present evidence. It seems to me that if there is a distinction, and I were compelled to make my choice between the two, I should prefer an opportunity to produce evidence to an opportunity to be heard; because in the latter case I might be only permitted, if strict construction is to be given to the language, to contend in argument against the evidence already submitted on the other side; but an opportunity to present evidence is an opportunity to present my case. But there is no distinction, in my judgment, between an opportunity to be heard and an opportunity to present evidence; and if there is, the latter is the broader and fuller privilege.

But they say, further, that some inference is to be drawn, and a sort of confession on the part of the Department is to be inferred, from the fact that now a sixty-day notice is given. Of course this is entirely outside the record in this case. It does appear from one of the pamphlets of the Department of Immigration that there is now a sixty-day notice. But if it is proper to refer to that fact at all, it is equally proper to state the reason, which may also be found in the publications of the Department, for the giving of a sixty-day notice. It arose because of the requests for extensions of time over the fourteen-day notice; and it was thought wisest, rather than to grant these extensions (as the

officials had done, and as they would have been granted in these cases that are here today if the plaintiffs in error had asked for any opportunity to be heard or had offered to submit any evidence), to fix a time that would make unnecessary the granting of any extensions. These plaintiffs in error, if the Court please, not only have never at any time offered to prove or to show by any testimony that there was an examination at the port of embarkation; not only have they never asked for any opportunity to be heard; but there is nowhere in the record any statement of any kind indicating today that they have not in fact violated this law in each and every instance in which a penalty has been imposed against them. It seems clear that it was their duty, in respect to a regulation properly submitted to executive officers, to exhaust their remedies before those officers in advance of an appeal to the courts claiming that they had not had due process of law.

That brings me, if the Court please, to a brief discussion of what is meant under the cases by "due process of law" when applied to circumstances of this character. I shall not hope or pretend to say anything new on so old a phrase as due process of law. But I venture this suggestion—that "due process of law" means that process of law which is due; that which is appropriate to the occasion; that which is adequate under the circumstances; that which fits the case; that which holds up the balance fairly between the obligation to protect the private interest of the citizen and the obligation to see that the design and purpose of the law itself are accomplished. This Court states that proposition in other and better words, but fully supporting the view for which I am contending, in *Hagar v. Reclamation District,* in 111 U. S., at page 701, where Mr. Justice Field, speaking for the Court, says:

"It is sufficient to observe here, that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the

law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

Again, in *Glidden v. Harrington,* 189 U. S., at page 258, Mr. Justice Brown says:

"These proceedings"——

Speaking of a tax case——

—"are amply sufficient to constitute due process of law. Although, with respect to this class of taxes, we have never had occasion to determine exactly what the Fourteenth Amendment required, we have held that the proceedings should be construed with the utmost liberality, and while a notice may be required at some stage of the proceedings, such notice need not be personal, but may be given by publication or by posting notices in public places. It can only be said that such notices shall be given as are suitable in a given case, and it is only where the proceedings are arbitrary, oppressive or unjust that they are declared to be not due process of law."

Again, in the Japanese Immigration Case, 189 U. S. (I read from page 101), this Court says, in speaking of an opportunity to be heard:

"Not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure; but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such offices are required to act."

Measuring the things done in this case by the requirements of due process so clearly enunciated in these cases,

there has been no "arbitrary, unjust, or oppressive" action. All the opportunity that was needed, and far more than was ever asked for or used, was given, in every instance, to be heard.

As was remarked by the Court *In re* Moy Quong Shing (125 Fed Rep., 641):

"They had, so far as appears, all the examination they wanted."

And as this Court said in *Buttfield v. Stranahan* (192 U. S., 497):

"The plaintiff in error does not appear to have asked for a hearing."

And finally, as was observed by this Court in the Chin Yow case (208 U. S., 11):

"If the petitioner was not *denied* a fair opportunity to produce the evidence that he desired, or a fair though summary hearing, the case can proceed no farther."

I desire, in conclusion, to suggest some practical questions and a consideration or two *ex necessitate* which it seems appropriate to call to the attention of the Court.

If these cases, these little one-hundred-dollar fines, were required to be made the subject-matter of a suit in Court, one can see at once the long delay that would be occasioned. There are involved in this case seven hundred of such fines, or $70,000. There have been imposed since the passage of this statute twelve hundred such penalties. The amount involved is so small, the expense of the litigation would be so great, that the United States officers would be rather discouraged than encouraged to enforce the statute. And this is the reason, unquestionably, which leads these ship companies not to desire an opportunity to be heard under this statute, but to destroy the statute itself.

It would have been a very simple matter, if the Court please, in any of these cases for the ship companies to send over with the immigrants at the time they came, if they had actually made any investigation—if a competent medical investigation had been made at the port of embarkation, it would have been a very simple thing and a very natural thing for them to send over in company with the immigrant the certificate that there had been a competent medical examination at the port of embarkation; and how easy it would have been to have presented that certificate from the foreign physicians to the immigration officers at Ellis Island!

Another consideration is that of the immigrant himself. Surely he is entitled to some consideration. While proceedings in court are dragging their slow length along, what is to become of the immigrant, the man who is said to be afflicted with a dangerous or contagious disease? Counsel for the plaintiffs in error say: The thing for him to do is to go back home. The immigration officers ought to just send the immigrant back, having found that he is afflicted with a dangerous or contagious disease. But he might not want to go. And would it be fair to send him, while the very question as to his condition was being investigated in a proceeding between other parties—a question far more important to him than the hundred dollars involved in the other case? The result of that action might be of the greatest importance as determining whether or not he was in fact afflicted with a contagious disease, and whether or not he was to become an American citizen. But more than that, he would be the best witness for either side. And we might have the situation where the Government of the United States, having found through its officers that a particular alien was afflicted with a contagious and dangerous disease, and that he ought to be deported for that reason, was *required to keep him in this country* for the purpose of showing that he was so afflicted and had been so afflicted, in order

to collect a hundred-dollar fine against the ship company that brought him over.

Another consideration is that, after all, what is asked here under these complaints against this practice and regulation is that the Court shall substitute its judgment for that of Congress and the executive officers charged with the duty of enforcing this statute.

In this case, if the Court please, after all is said, there is a mere balancing between the private right and the public need. On the one hand is a $100 penalty; on the other is the efficacy of a most wholesome public policy. The plaintiffs in error do not complain that they have been denied the full substance of justice. What they ask is that they shall have more of its form. We answer by appealing to higher and worthier considerations. It is essential to the safety and the health of the American people that these statutes against the importation of diseased aliens shall be promptly, summarily, and vigorously enforced. The justification for such measures rests, in the last analysis, upon the law of self-preservation, which is not only the first law of nature but the first law of nations.

ARGUMENT OF HON. WILLIAM G. CHOATE,

On Behalf of the Plaintiffs in Error.

Mr. CHOATE: If your Honors please, I propose to argue especially this morning the question of the constitutionality of this act. I must, therefore, make that my excuse for not following my learned friend who represented the Government through all these questions about actual notice and those questions which my associate argued—whether, in point of fact and independently of the question of the constitutionality of the act, there was a denial of due process of law. The time that your Honors allow is no more than sufficient to present this argument.

I must, however, refer to one or two matters that my learned friend on the other side has referred to.

In the first place, he throws overboard all the findings of fact, with one exception, relating to notice, which by the statute have the force of a verdict—that is to say, importing absolute verity. The exigency of this case seems to have required that, and I think, therefore, I may safely leave that part of the case where it is.

But there was another part of his argument which I must refer to, and that is the interpretation or construction of this section 9. On the face of it, it is a section declaring an offense against the United States and imposing a punishment for it. But my learned friend (I do not know how, by what process of reasoning) presents it to your Honors as if it was a permissive statute, allowing us to bring these aliens here on payment of a license fee. The two things are absolutely inconsistent with each other, and, I submit, and it is necessary for my argument on the constitutional question that I should maintain the proposition, that this is a penal statute—that is, a statute declaring an offense with a punishment. And the offense is the thing punished—not the bringing of the alien with a disease here, although the

inartificial way in which the statute is drawn might possibly lead at first sight to that conclusion, but the thing punished is bringing one here with a loathsome or contagious disease which could have been detected by an examination on the other side. That is the offense, and that is punished by a fine, and the fine imports an offense against the United States.

To say, as my learned friend does, that the real offense is bringing the diseased alien here, is imputing to Congress an impossible and an unreasonable purpose. This ship goes out from Southampton, starting for New York, having on board her two thousand aliens, would-be immigrants. They are all in perfect health when they start. She gets off Nantucket light and one of the passengers develops smallpox, to which he or she had been exposed before he or she left the port. The ship and the owner and the master have committed no wrong, and it is most unreasonable to say that the object of the statute is to punish them for bringing that person here. The only punishment is for bringing a person here with a disease which could, by medical examination, have been discovered.

This statute says that the owner shall pay. That creates a debt on the part of the owner, and if we had submitted to have our ships stopped and the Government had had to sue, they must have pursued the remedy which the law gives for a fine, which is by information in the circuit court. If it had been a penalty, it would be a suit in the district court.

With these preliminary observations I come to the question. That precise question is whether the provision in section 9 which commits to an executive officer, instead of a judicial tribunal (a judge or a judge with a jury), the trial and determination of the guilt of the accused and their liability for the fine is in conflict with the Constitution.

Our position is that it is in three respects: First, as regards the division of powers between the judicial and exec-

utive; second, that it is a taking of property without due process of law under the Fifth Amendment, and third, that it denies a right of a jury trial under the Sixth Amendment. What I have to say about the division of powers I shall say in connection with what I have to say about the Sixth Amendment. Those two cases are related to each other. One question is whether Congress had a right to take away from the party the right to the jury; the other is whether they had a right to take away from this party accused the right to a judge. And now I proceed to consider the third, which is whether the property is taken by due process of law.

At the very outset the question arises, What is the relation of this ninth section to the examination, the rejection, and the deportation of aliens? It is said to be an incident. It is an incident in the sense that it is in the same statute. It is an incident in the sense that this ninth section is intended in general to promote the policy of the deportation of undesirable aliens. But what is its relation to it? It is a separable and a separate part of the statute, just as separable and separate as that eighth section that your Honors construed a year ago, which imposed a penalty upon the master for landing an alien; and calling it an incident does not make any progress.

What is done is this: In pursuance of its power, which is almost absolute, to reject aliens the Congress calls to its aid another power, a distinct power—the power to define crimes and offenses against the United States and to punish them. When that power is called in it is called in with all its limitations, with all its constitutional limitations. The mere fact that it is called in to aid another power that is not subject to constitutional limitations to any great extent does not make it partake of the character of that power in being free from constitutional limitations.

This power to define crimes and fix punishments is not one of the enumerated powers. It is one of those powers which, although not enumerated, are absolutely essential to carrying on the Government. The only crimes that are

enumerated are piracy, offenses against the law of nations, crimes on the high sea, and the counterfeiting of coins and securities. These probably were enumerated because they were not in themselves and directly crimes against the United States. And therefore the fact that they are enumerated does not at all base any argument that this general power is not among the necessary powers.

The general power that is contained in the Constitution to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, gave an undoubted right to pass this statute in its main features. We do not complain of the statute, except that one thing—that by this statute, after declaring the offense and fixing the penalty, it makes an executive officer judge *pro hac vice* to try the party. And under another branch of my argument I shall contend that since the Star Chamber was abolished by the Long Parliament in 1641 the trial of crimes and offenses against the Government has not been and cannot be made an executive function.

This ninth section does not deal with the immigrant. It has nothing to do directly with the inspection or rejection and the deportation of the immigrant. It is for the punishment of a citizen, or some other person under the protection of our laws, for an offense, and that is subject to its own limitations.

There are some preliminaries which I think we may take for granted as self-evident or well settled in regard to this matter of due process of law. One is that the taking by fine or penalty is a taking under the Constitution, within the terms of the Constitution. Another is that the general rule is that the due process of law by which property can be taken is judicial process, and that when executive process is allowed to be due process in place of it, it is an exception to the general rule and rests on some sufficient reason to justify its superseding and taking the place of judicial process. What reason is sufficient is a matter for subsequent inquiry.

But there is no doubt that the relation of these two processes, both of which may be due process, is that the judicial process is the general rule and the executive process is the exception to be justified.

In other words, the presumption is always in favor of judicial process; and if any other process becomes due process, it is because an excuse must be given, a sufficient excuse, for its superseding judicial process. Our courts are created and are always open for the determination of questions of fact and law, for the enforcement of right and the redress of wrong. That is the object and end of the judicial power which is vested in the courts under the Constitution. But the question then is, in every case where an attempt is made to substitute executive process for judicial process, whether the excuse is sufficient.

Judicial process obviously is superior to executive process. Executive process, while it may be due process in certain cases, is inferior. It was not without reason that our fathers in the Constitution so carefully provided for the impartiality of the judges, giving them a tenure during good behaviour, and prohibiting the diminution of their compensation (such as it is) under their term of office—a provision which was not made and is not susceptible of being made with regard to any executive officer. Thus the Constitution itself recognizes the superiority of the judicial process, and justifies the presumption in its favor, which requires a cause to be shown where, in cases susceptible of judicial process, any substitution of other process is made.

I say advisedly "in cases susceptible of judicial process;" for though in general the lives, liberty and property of citizens and friendly aliens within the jurisdiction of the country are under the protection of the Constitution and the laws, through the courts, there are cases, and not a few, that are not susceptible of judicial process. The treaty-making power, exercised by the President and Senate, may conclude facts which have a distinct bearing upon and harsh opera-

tion upon the rights of parties; but there is no remedy through the courts. These are called, sometimes, "political facts." Then so in regard to powers granted to Congress. Some are so absolute or in such terms as to preclude judicial inquiry or interference. This very power to exclude aliens, for practical purposes, is an absolute power.

So there is another class of cases much relied on by the Government in this case (but wholly irrelevant, as I think, to the question in hand) where, by contract, the party who might otherwise invoke the aid of the courts is absolutely precluded from doing so. An example of that is the case of the situation of the stockholders in a national bank. The stockholders make a contract (that is what this court has said) with the Government; and the parties are bound by that contract. By that contract it is expressly provided that the executive officers of the Government shall execute certain powers—among the rest to determine whether or not the bank is solvent, or whether or not there is necessity for an assessment.

So the plenary power granted to Congress over the public lands, the Indian tribes, the postal service, and the regulation of commerce enables Congress, by its own direct action, or through such agencies as it shall choose to appoint, to determine facts even affecting the property and rights of individuals, without remedy through judicial process.

But here we are dealing with a subject which not only is susceptible of judicial process, but which at all times has been the subject of judicial process. I need only refer to the Judiciary Act passed in 1789, which parcels up between the District and the Circuit courts all proceedings for the enforcement of laws creating crimes and offenses against the United States, and declaring fines and penalties.

The next question is, What is sufficient reason for substituting, in a case which is susceptible of judicial process, any inferior process, as executive process? That question was fully answered in the great case of *Murray's Lessee v. Hobo-*

ken Land & Improvement Company, 18 How. Under a statute of 1820, officials of the Treasury Department were authorized to ascertain and state the accounts of collectors, and warrants were authorized to be issued for the collection of the money on the amount so ascertained. The act, however, gave the tax collector the right to bring action, after seizure of the property, to try the question of the amount due. The question was if such process was due process. It was clearly not judicial. It was executive. That case decided, once for all, three things: First, the test to be applied to determine if process is due process; second, the reason on which executive process may become due process; and third, the respective functions of the Court and Congress in determining that question.

The opinion in the case, by Mr. Justice Curtis, concedes that the general rule is that due process is judicial process; the presumption is in favor of it. It makes the test of the process being due process (that is, the process other than judicial process), first, whether it is prohibited by the letter of the Constitution; second, if not, whether it has been recognized by long-continued practice of this and other governments, and especially the English government, and the States after their independence. If it has been, it may be safely concluded that it was known to the framers of the Constitution, understood by them to be due process, and that the Constitution was adopted without intending to infringe upon it.

That is the test. Now, what is the reason? My learned friend has stated the reason. The reason is the imperative necessity that the Government should promptly collect its revenues. Justice Curtis says:

"Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding, sometimes by systems of fines and penalties, but always has been observed and yielded to."

This imperative necessity has often been referred to in the decisions of the courts. Thus, in *Springer v. United States,* 102 U. S., it was said:

"The prompt payment of taxes is always important to the public welfare. It may be vital to its existence."

What is thus true in time of peace is doubly true in time of war, of course; and no doubt the Court had, in those pronouncements, the ever-present possibility of war in view. In time of war the prompt collection of the taxes may become a matter of life and death. Long-continued practice, antedating the Constitution, undisputed and ever yielded to, was taken there, with this reason of necessity on which it was founded, as proof of the process being due process, though not judicial. It is the necessity which justifies executive process—necessity which knows no law; necessity which makes a law for itself; necessity which compels private interest to yield to public interest. In fact, it is the oldest of all laws, as my friend says—the law of self-preservation, as old as society itself; the law of self-defense. And it is all summed up in that maxim of law, *"Salus populi suprema lex."* It overrides all other laws.

Of this imperative necessity as applied to the class of cases in which this particular case belongs, the court and not Congress is the judge. That was distinctly held in the *Hoboken Land* case. I need not repeat the words of Justice Curtis by which he says that it is not for Congress to choose this or that process which it may think best. And in point of fact, if it had not been for the court to decide, all that wealth of research, historical research and argument, of Mr. Justice Curtis in that case would have been thrown away, or at least would become, and be, merely academic, if by simply pointing to the will of Congress you can establish a necessity.

A singular question came up in that case which illustrates the respective powers of the court and the Congress on this question. That law of 1820 contained a provision that after

the money was seized the collector might bring suit to have the amount accurately determined and correct any mistakes. Counsel said there:

"The Government admitted that this was not necessary. They have admitted that it was a proper case for judicial process; and the Government were bound by that. They could not say that executive process was necessary."

The Court said, in substance: No. Although this is, and we have found it is, a proper case for substituting executive for judicial process, and we affirm the power of Congress to make that provision, yet it was in the power of Congress to determine how far it was politic or necessary or proper to use that power. That is all there was of it.

This imperative necessity has other forms. It is not always to protect the Government against extinction by war, external or internal. Sanitary laws come under it. A ship comes into the harbor of New York with the plague on board. That is capable of carrying pestilence from one end of the country to the other. There can be no doubt whatever that executive process may be used to detain those people, to keep them in quarantine, and, if they escape, summarily to return them. But what would that have to do with a provision in the law, if there were one, imposing upon the keeper of the quarantine a fine for allowing a man to escape? That is not within the necessity? That does not stop the pestilence.

Another illustration of this drastic power, this use of executive instead of judicial process, occurs in the fact that at this very moment the executive officers of five States, in concurrence with the executive officers of the United States, are inspecting, seizing and killing cattle. For what? Why because of a dangerous contagious disease, which, if allowed to run riot, will corrupt and perhaps destroy the food-supply of the country, or some important part of it. There you have the danger of famine; and thus the three great scourges

which afflicted mankind in early times—war, pestilence, and famine—have left their ineffaceable traces on the laws of every country.

It is not necessary to refer to other examples, of which there are many, under the police laws. But they all rest on this: That the only excuse for substituting executive process for judicial process is some public danger—something that will thwart or prevent the operation of the Government in some of its important functions. Here we have three—the summary collection of taxes to prevent the disruption of the Government or its overthrow; the summary suppression of disease to prevent pestilence; the summary suppression of the destruction of food to prevent famine.

We now come to this case. Applying that question to this case, the questions are these: First, is there an imperative necessity for setting aside a judicial process in favor of an executive process in the class of cases to which this belongs—that is, the imposition and collection of fines and penalties for crimes and offenses against the United States—a necessity analogous in any way to those which I have described? And, secondly, has there been established in this class of cases a uniform and undisputed course of executive practice which proves the existence of such necessity?

In the first place, I say no such necessity exists. Fines and penalties differ from taxes in many important particulars. They do go into the Treasury—that is true—but they are not the regular support of the Government. They are not certainly due. It has been said of a tax that it is as certain as death. But with regard to fines and penalties, they are due if the party is guilty; and that is a question for the most part and generally submitted to judicial inquiry; and they are not depended on, like taxes, for the purpose of carrying on the Government.

The reasons that apply in cases of taxes do not apply at all to the collection of fines and penalties. There has been worked into this case, with great ingenuity, to impress your

Honors with the idea of a sort of public danger (not really a public danger), a danger of the congestion of the courts from the great number of these cases. In our brief we show your Honors that that has been grossly exaggerated The number of cases is not the number of fines that may be imposed. It may be reduced to the number of ships bringing immigrants; or it may even be reduced to the number of steamship companies owning the ships; and it would be reduced to a very few. I cannot go into that. I have not time; and I refer your Honors to what we have said in our brief, that there is no danger here of congestion. But the whole argument is false. Possible congestion of the courts, in the shifting and changing of business, the bringing up of new matters and new cases, is not a public danger. Such congestion has happened again and again in England and in this country, and it has been met by wise legislation, moulding in a different way the respective jurisdictions of courts, and other changes; and in itself it involves no danger. It is simply an inconvenience, and a present inconvenience. It has no resemblance to this doctrine of a public danger that must be averted; nor is it made, nor can it be made, a matter of imperative necessity.

The courts have sometimes referred to this matter of swamping the courts by a great number of cases; but how has it been done? I mean, what use has been made of it? It never has been made a reason for denying to a man what was his actual legal or constitutional right—never. It has been referred to as a reason of convenience, when the question was not of his absolute right, but of his having granted to him a right or process that was more or less in the discretion of the Court. That was so in what is called the *Sam Tuck* Case, where a Chinaman was denied his *habeas corpus;* but it was after the Court had determined that he was not legally, and as a matter of right, entitled to it. It became merely a question of convenience and a question of discretion whether he should have it before he had exhausted cer-

tain other remedies that were given him. That is the use that has been made of the argument of swamping the courts; and this whole thing, as far as this case is concerned, is a figment of the imagination. And I say this—that a judge that would deny a man his legal rights because of a congestion in the courts would be abdicating the judicial office; and a legislature that would, by a hair's breadth, sacrifice any of the securities of personal liberty for that reason, would confess legislative impotence; for there are other ways and better ways in which such a situation may be met.

I now come to the other branch of the case: Has there been established a uniform system, a uniform practice, either from the beginning of the Government or for a long time past, which shows that in the minds of the judges there has been need of executive process for the collection of fines or penalties? The cases are absolutely bare of such a system or practice.

It is inconceivable that this power to substitute executive process for judicial process for the imposition and collection of fines and penalties should have been a recognized power, and left no traces.

What are the cases relied on to prove that you can collect fines and penalties by executive process? The principal one is that of additional duties. An importer who brings in goods is bound, by accepting the privilege of bringing them in (that has been held several times by this Court), by the executive process by which the value of the goods is ascertained and by which the tax is fixed. The statute provided that if his entry-value was under the value found by the appraisers a certain per cent (I have forgotten whether it is ten or twenty), he should then be charged with an addition to the duties of ten per cent or twenty per cent, or whatever it is.

Quite recently it has been, I may say, almost, discovered that that claim for the additional duty is, technically, a penalty. It was treated for years as an addition to the duties.

There was no room there for any judicial process; for the same fact which determined the value of the goods determined the additional duties. The statute was automatic. It was added by the Collector. And that is where this case of additional duties, and penalties for not paying in time, and additions to the income tax, all differ from this case. Here the fact that the man has the disease when he arrives is proof enough for his deportation; but to impose the fine the further fact must be found that it could have been discovered by a medical examination on the other side.

But, wholly aside from that, that case is not in point, because the decision rests, not upon the mode of collecting the penalty, but upon the fact that by accepting the privilege of bringing in his goods he has agreed to all the conditions that the Government imposes. There is this difference between taxes and customs: Taxes, strictly, are wholly involuntary. Customs are voluntary to this extent—that the man need not import the goods unless he wishes to. If he does, then he voluntarily takes on himself all the conditions. That is pointed out very clearly by Mr. Justice White in the Tea Standard Cases, *Buttfield v. Stranahan*.

Then there are some other cases which are relied on. One is the power of the Postmaster General to inflict penalties, as they say, and to cut off from the wages the compensation of the carriers. But, as has been pointed out by my associate, that, also, is a case of contract. There is not a clear-cut case to be found in the books—not one—where the executive process imposing a fine or a penalty has been sustained by the courts and where there is not some other ground pointed out by the Court on which it can be sustained.

What, then, have we? We have no practice. It is absolutely barren of practice. My learned friend has cited two cases from England. In one case, at the election of a commissioner of customs, a fine was to be imposed. But all that that statute says, and all that that case shows, as I read it, is that it was for the commissioner of customs to make an

election whether there should be a prosecution for it; otherwise it could not be collected. And the other case is cited more especially on the matter of clearance. He has gone back to English cases and the English statutes; and I think I may assume that there has been no case found in England in recent times in which the collection of fines or penalties by executive process has been justified.

It may be suggested—I think it is suggested in my friend's brief, indirectly, more or less—that these steamship companies are acting themselves under a privilege of a nature somewhat similar to that of the importer, similar to that of the alien who comes in here as a matter of favor—that they are acting under a privilege of a similar nature in bringing aliens to the country (he speaks of it as "this business"), and are similarly bound by any laws passed by Congress, whatever they may be, imposing conditions on the business. And it is said in the brief of the Government that Congress cannot only legislate about the aliens, but about the ships which bring them in, and their owners and masters. I admit they may legislate; but how? What can they do?

The situation of the plaintiffs in error in entirely different from that of the importer, from that of the alien who comes in here asking as a favor to become a part of our population. Neither by this act nor by any act of Congress is any privilege given to bring aliens into or to the country. The plaintiffs, in bringing their ships with passengers and merchandise into the ports of the country, are merely exercising the right which is common to all men, to sail the seas, the highways of all nations, and are availing themselves of the "open door" which, as a matter of policy, we have always held open, and which other civilized countries hold open for the purpose of commerce to all comers.

To what extent, then, may Congress legislate? Why, of course, when they come within the territorial limits of the

United States they are subject to all police regulations. They may be prohibited from doing certain things, as in this case, under a penalty; and if they violate the prohibition, they have got to take the consequences, if the law is valid. Congress may enact laws imposing head-money, which is in the nature of a tax. Congress may regulate their navigation when they get within our waters. They may be subject to tonnage dues. Why, this very act bristles with liabilities and exactions of one kind and another; but there is not a word in it that can be construed as giving a privilege.

The ship, its owner and its master are not authorized to introduce anybody into the United States. Take the case of an ordinary ship landing its passengers—the ship or its owner do not introduce that passenger into the United States. The passenger, if he is not an alien, comes of his own free will. The ship has discharged its duty under its contract when that passenger steps ashore. An alien seeking to come in is bound by all the conditions which Congress shall impose. We are prohibited from putting him on shore. What we have to do with the alien is to deliver him to the United States, and the United States determines whether or not he shall come in (§ 18, Immigration Act).

Of course, the master and the owner are bound to obey all proper orders and laws given by the Government, or they must suffer the consequences.

I may illustrate what I mean by another case. It is a misdemeanor now for a man, no matter who he is, to spit on the sidewalk in New York. Is he exercising a privilege which will forfeit any of his constitutional rights under the constitution of New York because he walks the streets and breathes the air of the city? Of course not. This general proposition may be made (and I do not think it can be shaken): That the exercise of common rights, common to all men in the same circumstances, cannot be made the basis of waiving or bartering away any man's constitutional rights of life, liberty or property.

I come now very briefly, with your Honors' indulgence, to speak of the Sixth Amendment, and the division of powers. As to the Sixth Amendment, the question is just here: Your Honors have held that a jury may be dispensed with in certain classes of petty cases. My learned friend refers to the case of *Callan v. Wilson*. I am willing the case should be judged by that. I am willing the case should be judged by the standard of what is a petty offense by *Callan v. Wilson*. In that case your Honors refer to various States which have taken away the right of jury in petty cases; and those offenses are described in one case as "minor statutory police offenses," in another as "breaches of the peace and petty offenses," and in another as "minor offenses having reference to the internal police of the State." Now, this is not that case. Here is a crime of considerable magnitude; and in estimating whether it is a serious or a minor offense we ought to look not only to the penalty but to the nature and the consequences of the breach of the statute.

The owner of a ship, being informed by the Government that he must have these parties medically examined, fails to do so. It is not a minor offense. In its consequences it is most serious. It may carry pestilence into a friendly country. It may carry disease and sickness and death to the whole ship's company. And this $100 can hardly be called "petty" in the view of the founders of our Government. It was just at the line of $100 that the jurisdiction between the District and the Circuit courts began and terminated in the judiciary act. If the fine was $100 or less, it could go into the District Court. If it was more than $100, it had to go into the Circuit Court—the Superior Court, as it was then. Money has become very cheap; but how was it when the Constitution was formed? Twenty dollars then was considered enough to make it necessary that there should be a jury in a civil case.

Briefly, then, our claim is that under the Sixth Amendment this is a serious offense with a very respectable penalty;

and the penalty, your Honors will see, is multiplied many times. One ship may bring twenty such persons, or, if we are very unfortunate, it may bring forty or fifty.

Your Honors have said that the jury may be taken away in petty cases. But what case or what decision or what dictum has ever said that the judge can be taken away? There is not any. And there is not any in these State decisions to which reference is made for the purpose of justifying this practice. Search all those States, and you will not find a case.

Is executive process for the punishment due process—I mean, intrinsically—or is judicial process the only process? We say that it is clearly shown by the history of the law that judicial process is the necessary and only process for punishment.

In the days of the early Stuarts and the Tudors, the Court of Star Chamber had power to inflict fines and other punishments. That court consisted of the King's Council. It was a court of ten men, principally members of the King's Council. I think judges sat in the court. This inflicting of fines and other punishments thus by executive authority was one of the grievances against the King; and in the Long Parliament the Court of Star Chamber was abolished by the statute of 16th Charles I, chapter 10. (See Hallam's English Constitutional History, vol. II, page 99.) I have not put that on my brief, and perhaps your Honors should take note of it—Statutes 16 Charles I, chapter 10. In that statute is this recital:

"Neither His Majesty nor His Privy Council hath or ought to have any jurisdiction, power, or authority, by any arbitrary way whatsoever, to examine or draw into question, determine, or dispose of, the lands or goods of any subject of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice and by the ordinary course of the law."

Could there be a more explicit declaration that the power to punish is only, and must forever afterwards only be, the power of the judges, the power of the courts? We inherit, with our English blood, the English common-law, English liberty, English ideas of right and justice; and we ever claim as our own the benefits of all great declarations of rights of the English people, from Magna Charta down to the Declaration of Rights in 1688. Now, this declaration that punishment by the executive was forever abolished inures to our benefit. If we find nothing in the Federal Constitution in the way of an express declaration, no positive declaration, that punishment is exclusively a judicial function and should not be inflicted by executive order, it is simply because, having been abolished one hundred and fifty years before, it did not enter into the heads of the framers of the Constitution that there was any question about it. They were very solicitous about punishment. Of the ten first amendments, four relate exclusively to punishment. There was the question of excessive fines; there was the question of being confronted with witnesses; there was the question of how far searches and seizures should go in aid of criminal prosecutions. These were still burning questions. There was the question, above all, of how far the jury should be allowed—in what cases? These, I say, were all open questions. But the question of punishment by executive order was not open. That had been given up. No such thing was thought of. And there is no practice, as I have shown, either here or in England, which justifies it.

Therefore I say that the very plain suggestion made by this Court in the *Wong Wing* Case that the question of our taking away the property of one of these poor aliens (instead of the question of his deportation) would be purely a judicial question, and the decision in *Kilbourn v. Thompson* that Congress itself has no power to punish (from which seems to flow the result that they could not give the power to an executive officer), and the emphatic declaration of Mr. Justice Curtis in the *Murray's Lessee v. Hoboken Land & Im-*

provement Case that what is essentially a judicial question cannot be taken from the courts and given to the executive, nor can, on the contrary, what is purely an executive question be taken from the executive and given to the courts—I say all these rest on a historical basis, and that punishment by fine or penalty (and that is punishment) is judicial and not executive.

In this case this statute was pretty artfully drawn; but if it had been drawn in substance the same thing, but in this form, everybody would have seen right through it: Let the statute first define the duty of a medical examination on the other side; then the prohibition for bringing a party here whose disease could have been discovered there; then the fine, and then, at the end, have said: "And the Secretary of Commerce and Labor is hereby appointed a judge to hear and determine all such cases, and to make rules for the government thereof." That is what it is in effect.

What excuse is made for this infringement upon constitutional rights? Why, temporary congestion of the courts, or some temporary inconvenience. But we ought, your Honors, to observe in all things a due sense of proportion. It is an important matter, this deportation of aliens; but there are other matters that are of infinitely more moment; and one of them is the preservation of the liberties of the people secured by the Constitution. And long ages after this flood of immigration shall stop, from the population of the world reaching its equilibrium (if that ever happens, and it must happen some time)—I say, long ages after that, these guarantees of personal liberty, for life, liberty, and property, will remain among the choicest treasures of the people. And it is for your Honors to see to it that they are handed down unimpaired.

(The Court thereupon proceeded to the hearing of the next case.)

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Supreme Court of the United States.

OCEANIC STEAM NAVIGATION COMPANY, Limited, Plaintiff in error, *against* NEVADA N. STRANAHAN, Defendant in error. No. 1.	No. 509. Oct. Term, 1908.
INTERNATIONAL MERCANTILE MARINE COMPANY, Plaintiff in error, *against* NEVADA N. STRANAHAN, Defendant in error. Nos. 1 & 3.	Nos. 510, 511. Oct. Term, 1908.

Statement.

These three cases involve questions arising under the laws and Constitution of the United States and come directly to this Court on writs of error directed to the Circuit Court of the United States for the Southern District of New York.

The actions were brought to recover the amount of certain fines imposed and collected under Section 9 of the Immigration Act of March 3, 1903.

Section 9 is as follows:

> "Sec. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such fine imposed upon it remains unpaid, nor shall such fine be remitted."

The actions originally sought the recovery of some seventy fines imposed and collected under this section. Later, for the purpose of presenting the questions involved on a less voluminous record the action of the Oceanic Steam Navigation Company, Limited, was severed into two actions, one containing two counts and the other the remaining counts. The action of the International Mercan-

tile Marine Company was severed into three actions, one containing two counts, the second containing some twenty-three counts, and the third containing one count.

The first action of the Oceanic Steam Navigation Company, Limited, and the first and third actions of the International Mercantile Marine Company involving the recovery of five fines were tried together without a jury pursuant to stipulation before Hon. Charles M. Hough, United States District Judge.

Action No. 509, pp. 14, 34.
Action No. 510, pp. 14, 47.
Action No. 511, pp. 9, 33.

The same testimony was taken for each case and it was stipulated that all the testimony should apply to each of the actions.

Action No. 509, p. 34.
Action No. 510, p. 47.
Action No. 511, p. 33.

These are the cases now before this court for review.

The five counts resolve themselves into two classes which will hereafter be referred to as the counts "Before Circular 58" and the counts "After Circular 58." Circular 58 was a departmental circular issued by the Department of Commerce and Labor in January 1905, prescribing the method thereafter to be adopted by the Bureau of Immigration for the enforcement of the provisions of Section 9. The two counts in the action of the Oceanic Steam Navigation Company, Limited (No. 509),

and the first count of the Action No. 1 of the International Mercantile Marine Company (No. 510), belong to the class of fines collected before Circular 58, and the second count in the action No. 1 of the International Mercantile Marine Company (No. 510), and the single count in Action No. 3 of that Company (No. 511), belong to the class of fines collected after Circular 58.

The issues were decided by the Trial Judge in favor of the defendant. Special findings were submitted by both sides and the findings with the rulings thereon as made by the Trial Judge are printed in full in the records.

Action No. 509, pp. 16-32.
Action No. 510, pp. 16-45.
Action No. 511, pp. 12-31.

The facts as found in the special findings are in brief as follows:

The plaintiffs in error are respectively British and American corporations engaged in operating lines of steamships for the transportation of passengers and merchandise between European ports and the Port of New York. Their steamships were operated at regular intervals pursuant to schedules issued to the public and generally advertised, and the business of the plaintiffs in error was arranged and conducted in accordance with, and reliance upon, such schedules. Any interruption or disarrangement of the schedules would have seriously interfered with the business of the plaintiffs in error and subjected them to great loss and damage. The defendant was the Collector of Customs at the Port of New York.

Plaintiff's Findings 1-4, Action No. 509, p. 25.
Plaintiff's Findings 1-4, Action No. 510, p. 33.
Plaintiff's Findings 1-4, Action No. 511, p. 22.
Defendant's Findings 1-4, Action No. 509, p. 16.
Defendant's Findings 1-4, Action No. 510, p. 16.
Defendant's Findings 1-4, Action No. 511, pp. 12, 13.

BEFORE CIRCULAR 58.

In these cases the fines were imposed and collected as follows.

Shortly after the arrival of the steamship from a foreign port, the master or owner received a letter from the Solicitor to the Collector of the Port of New York to the general effect that the Secretary of the Department of Commerce and Labor had imposed a fine upon the ship because he was satisfied that a certain alien who had arrived by said ship was, at the time of his embarkation from a foreign port, afflicted with trachoma, a dangerous contagious disease, which might have been discovered by a competent medical examination made at that time, and that clearance would be refused until the fine was paid. The letters are set forth in the Findings.

Plaintiff's Findings Nos. 6 & 19, Action No. 509, pp. 26, 28.
Plaintiff's Finding No. 6, Action No. 510, pp. 33, 34.

With reference to these letters the Trial Judge found:

> "The receipt of such letter was the first notice the plaintiff received that the imposition of a fine under Section 9 of the Immigration Act of 1903 was contemplated by the Secretary of the Department of Commerce and Labor or any other officer of the Government of the United States with reference to the said alien . . ." (naming the alien).
>
> Plaintiff's Findings Nos. 7 & 20, Action No. 509, pp. 26, 28.
>
> Plaintiff's Findings Nos. 7 & 20, 510, p. 34.

And with reference to the imposition of said fines the Trial Judge found—

> "In imposing said fine the Secretary of the Department of Commerce and Labor acted without notice to the plaintiff and without any opportunity to the plaintiff to be heard."
>
> Plaintiff's Findings Nos. 8 & 21, Action No. 509, pp. 26, 28.
>
> Plaintiff's Finding No. 8, Action No. 510, p. 34.

And also—

> "Said fine was imposed by said Secretary of the Department of Commerce and Labor without any suit at law or in equity and without any hearing or proceeding whatever of which the plaintiff had notice or at which the plaintiff had an opportunity to be heard or to produce evidence."
>
> Plaintiff's Findings Nos. 12 & 25, Action No. 509, pp. 27, 29.
>
> Plaintiff's Finding, No. 12, Action No. 510, p. 34.

The collector thereupon exacted from the owner of the vessel the payment of said fine of one hundred dollars as a condition of granting clearance to the vessel on its next outward bound voyage and refused to grant clearance to the vessel unless the fine was paid, which payment the owner made to the collector involuntarily and under duress and only for the purpose of obtaining clearance for said steamship and avoiding the serious loss and damage which would result from the interruption and disarrangement of its schedule and from the failure to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship on said voyage pursuant to said schedule and for the purpose of avoiding the pains and penalties imposed on masters of ships departing from the Port of New York for foreign ports without clearance.

Plaintiff's Finding Nos. 14 & 27, Action No. 509, pp. 27, 29.
Plaintiff's Finding No. 14, Action No. 510, p. 35.

At the trial the defendant conceded that all of the fines were paid involuntarily and under protest.

Action No. 509, p. 86.
Action No. 510, p. 99.

"At the time of said exaction of said One hundred dollars ($100) from the plaintiff, it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Secretary of the Department

of Commerce and Labor that a fine had been imposed under Section 9 of the Act of March 3, 1903, upon a steamship, its owner, or the person operating it, to refuse clearance to such steamship until said fine was paid, and the adoption of such practice by the defendant had been made known by him to and among steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff."

Plaintiff's Findings Nos. 15 and 28, Action No. 509, pp. 27, 29.
Defendant's Findings Nos. 17 and 28, Action No. 509, pp. 20, 23.
Plaintiff's Finding No. 15, Action No. 510, p. 35.
Defendant's Finding No. 17, Action No. 510, p. 21.

"At the time of the refusal to grant clearance and of the payment of said sum of One hundred Dollars ($100) to obtain the same, it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for the payment of said sum, and the refusal of the defendant to grant clearance without such payment, were illegal, and that all payments made by them or any of them, to obtain such clearance, were made involuntarily and under duress."

Plaintiff's Findings Nos. 16 and 29, Action No. 509, pp. 27, 30.
Defendant's Findings Nos. 18 and 29, Action No. 509, pp. 20, 24.
Defendant's Finding No. 18, Action No. 510, p. 21.

"Said exaction of said One hundred dollars ($100) was one of a number of exactions under similar circumstances made by the defendant, as such Collector, from said steamship companies, and the protests of all of such companies against such exactions had at all times been disregarded by him."

Plaintiff's Findings Nos. 17 and 30, Action No. 509, pp. 28, 30.
Defendant's Findings Nos. 19 and 30, Action No. 509, pp. 20, 24.
Plaintiff's Finding No. 17, Action No. 510, p. 35.
Defendant's Finding No. 19, Action No. 510, p. 21.

AFTER CIRCULAR 58.

In January, 1905, the Department of Commerce and Labor changed its method of imposing and collecting fines under Section 9 in some respects. A circular was issued known as Department Circular No. 58, regulating the practice with reference to the collections of fines. This circular is printed in full in the record.

Plaintiff's Finding No. 18, Action No. 510, pp. 36-38.
Plaintiff's Finding No. 5, Action No. 511, pp. 22-25.
Defendant's Finding No. 20, Action No. 510, pp. 21-24.
Defendant's Finding No. 9, Action No. 511, pp. 14-16.

In these cases the Commissioner of Immigration, shortly after the arrival of the steamships at

New York, served a written notice in the form prescribed by Circular 58 upon the steamship company, to the effect that a physical examination of the alien indicated that a fine should be imposed under Section 9, and that if the Company desired to submit evidence to show that the fine should not be imposed it would be allowed fourteen days from the date of the notice for that purpose and clearance would be granted when the ship was ready to sail, provided a deposit of $100 was made with the Collector of the Port within twenty-four hours after the receipt of the notice as security for the payment of the fine should it be imposed.

Plaintiff's Finding No. 20, Action No. 510, pp. 38, 39.
Plaintiff's Finding No. 7, Action No. 511, pp. 25, 26.

With reference to the notice given in each of these cases, the Trial Judge has found—

> "Said letter was the first notice the plaintiff received that the imposition of a fine under Section 9 of the Immigration Act of 1903 was contemplated by any officer of the United States Government with reference to said alien. . . ." (naming the alien).

Plaintiff's Finding No. 21, Action No. 510, p. 39.
Plaintiff's Finding No. 8, Action No. 511, p. 26.

Payments were made by the steamship company, in one case after the expiration of the

twenty-four hours but within forty-eight hours after the receipt of the notice.

Plaintiff's Finding No. 23, Action No. 510, p. 39.

And in the other case within the prescribed twenty-four hours.

Plaintiff's Finding No. 10, Action No. 511, p. 26.

The defendant acting under the order of the Secretary of the Department of Commerce and Labor, and as Collector of the Port of New York, demanded and exacted from the plaintiff this payment of One hundred dollars ($100) when the ship which had brought the alien afflicted with trachoma was at the Port of New York, ready to depart therefrom on a voyage to foreign ports, pursuant to its said schedule, before any fine had been imposed, as a condition of granting clearance to said steamship for said voyage from the Port of New York, which payment the plaintiff then made to the defendant, as such collector, involuntarily and under duress and only for the purpose of avoiding the serious loss and damage which would result from the interruption and disarrangement of the said schedule, and from the failure of the plaintiff to carry out the many contracts it had made to transport passengers and merchandise from the Port of New York to foreign ports on said steamship, pursuant to said schedule, and for the purpose of avoiding the pains and penalties imposed upon masters of ships departing from the Port of New York for foreign ports without obtaining clearance.

Plaintiff's Finding No. 23, Action No. 510, p. 39.
Plaintiff's Finding No. 10, Action No. 511, p. 26.

At the trial the defendant conceded that in each case the payment was made involuntarily and under protest.

Action No. 510, p. 99.
Action No. 511, p. 85.

In each case a written protest was filed.

Plaintiff's Finding No. 24, Action No. 510, p. 40.
Plaintiff's Finding No. 11, Action No. 511, pp. 26, 27.

The Trial Court found:

"At the time of said exaction and payment of said one hundred dollars ($100) by the plaintiff to the defendant it was the uniform practice of the defendant, as Collector of the Port of New York, whenever informed by the Commissioner of Immigration that it appeared to his satisfaction that a steamship or its owner was, or might be, liable to a fine under Section 9 of said Act of March 3, 1903, to refuse clearance to such steamship until a payment of one hundred dollars ($100) was made to him, and the adoption of such a practice by the defendant had been made known by him to and among the steamship companies operating steamships between the Port of New York and foreign ports, including the plaintiff."

Plaintiff's Finding No. 25, Action No. 510, p. 40.
Plaintiff's Finding No. 12, Action No. 511, p. 27.

Also

"At the time of the refusal to grant clearance to said steamship and of the payment of said sum of one hundred dollars ($100) to obtain such clearance it was well known to the defendant that the plaintiff and other steamship companies operating steamships under schedule between the Port of New York and foreign ports claimed that the demand of the defendant for said sum and the refusal of the defendant to grant clearance without such payment were illegal and that all payments made by them or any of them, to obtain such a clearance were made involuntarily and under duress."

Plaintiff's Finding No. 13, Action No. 511, p. 27.

And also

"Said exaction of one hundred dollars ($100) was one of a number of exactions made under similar circumstances by the defendant and the protests of all of such companies against such exactions had at all times been disregarded by him."

Plaintiff's Finding No. 27, Action No. 510, p. 41.
Defendant's Finding No. 35, Action No. 510, p. 32.
Plaintiff's Finding No. 14, Action No. 511, p. 27.
Defendant's Finding No. 21, Action 511, p. 21.

With reference to this notice under Circular 58, the Trial Court has found:

"The period of fourteen days from the receipt of said letter of July 5, 1905, within

which to submit evidence did not afford the plaintiff a reasonable opportunity to obtain evidence from the port of embarkation and to be heard upon the question whether a fine should be imposed in the case of said alien."

Plaintiff's Finding No. 29, Action No. 510, p. 41.
Plaintiff's Finding No. 15, Action No. 511, p. 27.

The procedure for the imposition of fines adopted by the Department appears from the evidence offered by the defendant. Before Circular 58, whenever a Government surgeon found an alien on a steamship suffering from trachoma, or other dangerous contagious disease, which he believed might have been detected by a competent medical examination at the port of embarkation, he made a certificate to that effect which was forwarded by the Commissioner of Immigration to the Secretary of the Department of Commerce and Labor for his action thereupon. Acting solely on this certificate, the Secretary forthwith imposed a fine and notified the Collector to refuse clearance until the fine was paid.

In the cases after Circular 58 the Commissioner of Immigration at New York, acting upon a similar certificate, served the notice in the form set out in Circular 58, requiring a deposit within twenty-four hours and if the deposit was not made within the twenty-four hours, transmitted the certificate to the Secretary at Washington with the recommendation that a fine be imposed. If the deposit was made the one hun-

dred dollars was held by the Commissioner for fourteen days and then the certificate was transmitted to the Secretary with the recommendation that a fine be imposed, which was forthwith done. In each case the Secretary stated that there had been "due opportunity for hearing."

Defendant's Finding No. 29, Action No. 510, pp. 28, 29.
Defendant's Finding No. 16, Action No. 511, pp. 19, 20.

In every case the sole basis for the action of the Department was the certificate of the surgeon that the alien was suffering from trachoma and that the existence of said disease might have been detected at the time of foreign embarkation transmitted with a letter of the Commissioner of Immigration.

Plaintiff's Findings Nos. 9 & 22, Action No. 509, pp. 26, 28.
Plaintiff's Findings Nos. 9, & 31, Action No. 510, pp. 34, 41.
Plaintiff's Finding No. 18, Action No. 511, p. 28.

Upon evidence introduced by the defendant over plaintiff's objection to it as immaterial and irrelevant and at the request of the defendant, the Trial Judge found:

> "On the respective days of arrival of the respective aliens mentioned in the complaint, the surgeon in charge at Ellis Island sent notices which were addressed to and received by the plaintiff and which reported that the respective aliens had been placed in the hospital with a disease of the eyes."

"At all the times mentioned in the complaint, the plaintiff had in Ellis Island its own representative whose business took him regularly there, and who inspected and had free access to the records of the hospital to which the said aliens were removed and to the other records at Ellis Island (including the minutes of the Special Inquiry Board which passed upon the right of the aliens to land and denied that right) and who could have reported to the plaintiff the sending of the respective aliens to the hospital if he had desired or been instructed by plaintiff so to do."

"From the surgeon's notices above mentioned and from the plaintiff's representative above mentioned and from the previous impositions of penalties the plaintiff knew, or might have ascertained, that the penalties prescribed under Section 9 of the Act of March 3, 1903, would in all probability be imposed in respect of the said aliens."

Defendant's Findings Nos. 5, 6 & 7, Action No. 509, pp. 16, 17.
Defendant's Findings Nos. 5, 6 & 7, Action No. 510, p. 17.
Defendant's Findings Nos. 5, 6, & 7, Action No. 511, p. 13.

At the request of the plaintiff, the Trial Judge found on the same subject:

"At the time of the arrival of said aliens at the Port of New York, the plaintiff had at Ellis Island a person known as a landing agent, whose duties were exclusively to look after the welfare of the aliens arriving by said steamships, and to see that they were properly forwarded to their respective destinations."

"There was no evidence produced on the trial that in the case of the aliens" (naming them) "the said landing agent was in fact notified of the intention of any officer of the United States Government to impose a fine in the case of either of said aliens under the provisions of Section 9 of the Immigration Act of March 3, 1903."

Plaintiff's Findings Nos. 33 & 34, Action No. 509, p. 30.
Plaintiff's Findings Nos. 37 & 38, Action No. 510, p. 42.
Plaintiff's Findings Nos. 24 & 25, Action No. 511, pp. 28, 29.

The testimony shows that the representative of the steamship company whose business took him regularly to Ellis Island, referred to above in the Defendant's Sixth and Seventh Findings in each case, was the landing agent referred to in Plaintiff's Findings (*supra*).

Action No. 509, p. 50.
Action No. 510, p. 63.
Action No. 511, p. 48.

Assignments of Error.

In view of the fact that the same testimony was taken in all of the cases, the assignments of error are, to a large extent, similar in each of the three cases. They will be found at length in the records.

Action No. 509, pp. 88-95.
Action No. 510, pp. 101-109.
Action No. 511, pp. 87-94.

The errors assigned are the admission in evidence of certain exhibits and testimony (Assignments 1-48 in each case) and the rulings of the Trial Court upon Requests to Rule presented in the form of Conclusions of Law by the plaintiff and the defendant. All the plaintiff's requests were refused and all the defendants requests were found.

The assignments upon which the plaintiffs in error now rely that are applicable to all the five counts appear in different forms as the rulings were made in the course of the proceedings in the Trial Court but may be summarized as follows:

1. The Court erred in refusing to rule that Congress has no power under the Constitution of the United States to provide for the taking of the property of any person as a fine or penalty for an offense against Section 9 of the Immigration Act of March 3, 1903, without notice to such person and without a reasonable opportunity for such person to be heard.

Action No. 509, Assignment No. 59, p. 93.
Action No. 510, Assignment No. 63, pp. 106, 107.
Action No. 511, Assignment No. 59, p. 92.

2. The Court erred in refusing to rule that the exaction of the sum of $100 from the plaintiff deprived the plaintiff of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Action No. 509, Assignments Nos. 52, 56, pp. 92, 93.

4a. The Court erred in refusing to rule that the imposition of the fine was in violation of the right of the plaintiff under the Sixth Amendment of the Constitution to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against it and otherwise as stated in said amendment.

Action No. 509, Assignment Nos. 51, 55, pp. 92, 93.
Action No. 510, Assignment Nos. 51, 59, pp. 105, 106.
Action No. 511, Assignment No. 55, p. 91.

Action No. 510, Assignments Nos. 52, 56, 60, pp. 105, 106.
Action No. 511, Assignments Nos. 52, 56, p. 91.

3. The Court erred in refusing to rule that the imposition of the fine was in violation of the right of the plaintiff to have its liability to such fine established by a judicial trial under Section 1 of Article III of the Constitution of the United States.

Action No. 509, Assignments Nos. 49, 53, p. 92.
Action No. 510, Assignments Nos. 49, 57, pp. 105-106.
Action No. 511, Assignment No. 53, p. 91.

4. The Court erred in refusing to rule that Congress has no power under the Constitution of the United States, to authorize the imposition of a fine or penalty for an offense against Section 9 of the Immigration Act of 1903, without a judicial trial to establish the liability to such fine or penalty.

Action No. 509, Assignment No. 57, p. 93.
Action No. 510, Assignment No. 61, p. 106.
Action No. 511, Assignment No. 57, p. 92.

5. The Court erred in refusing to rule that, under Section 9 of the Immigration Act of March 3rd, 1903, clearance can not be refused, unless a

fine has been legally imposed for an offense against the provisions of said act.

Action No. 509, Assignment No. 60, p. 93.
Action No. 510, Assignment No. 64, p. 107.
Action No. 511, Assignment No. 60, p. 92.

6. The Court erred in refusing to rule that Congress has no power to authorize the Secretary of the Department of Commerce and Labor, or any other officer of the United States Government to take private property, in the form of a fine, for an offense against Section 9 of the Immigration Act of March 3rd, 1903, unless there is legal proof that such offense has been committed.

Action No. 509, Assignment No. 62, p. 93.
Action No. 510, Assignment No. 66, p. 107.
Action No. 511, Assignment No. 62, p. 92.

7. The Court erred in ruling that the payments of said several sums of $100.00, were lawful conditions imposed upon the privilege of clearance.

Action No. 509, Assignment No. 69, p. 94.
Action No. 510, Assignment No. 76, p. 108.
Action No. 511, Assignment No. 71, p. 93.

8. The Court erred in admitting in evidence, as the basis upon which the alleged fines were imposed, the letters marked "Defendant's Exhibits F1-F3, inclusive, G1-G9, inclusive, H1-H3, inclusive, I 1-I 3, inclusive, and L 1-L 5, inclusive," because said papers showed that the fines had been imposed without due process of law in violation of the Fifth Amendment, and without a judicial trial in violation of Article III of the Constitution.

Action No. 509, Assignments Nos. 14-31, 42-46, pp. 89-91.
Action No. 510, Assignments Nos. 14-31, 42-46, pp. 101-104.
Action No. 511, Assignments Nos. 14-31, 42-46, pp. 87-90.

9. The Court erred in admitting the evidence and testimony relating to the accessibility of Ellis Island records to the plaintiffs, and the sending of surgeon's notices to the plaintiffs in the form of defendant's exhibits "B," "C" and "K."

Action No. 509, Assignments Nos. 1-11, 35, pp. 88-91.
Action No. 510, Assignments Nos. 1-11, 35, pp. 101-104.
Action No. 511, Assignments Nos. 1-11, 35, pp. 87-89.

10. The Court erred in admitting in evidence the testimony of Mr. Hamilton relating to the acts of the plaintiffs and of the government officials subsequent to the exaction of said sums of $100.

Action No. 509, Assignments Nos. 37-40, p. 91.

Action No. 510, Assignments Nos. 37-40, p. 104.
Action No. 511, Assignments Nos. 37-40, p. 90.

Assignments of error, which apply only to cases arising subsequent to Circular 58, are:

11. The Court erred in refusing to rule that the provisions of the Immigration Act of March 3rd, 1903, did not authorize the Secretary of the Department of Commerce and Labor, to adopt the procedure for the collection of fines for offenses against Section 9 of said Act, set forth in the Department Circular No. 58.

Action No. 510, Assignment No. 53, p. 105.
Action No. 511, Assignment No. 49, pp. 90, 91.

12. The Court erred in refusing to rule that the provisions of the Immigration Act did not authorize the withholding of clearance before any fine had been imposed.

Action No. 510, Assignment No. 55, p. 105.
Action No. 511, Assignment No. 51, p. 91.

13. The Court erred in refusing to rule that Congress had no power, under the Constitution of the United States, to authorize an executive officer to compel a deposit of money as security for the ultimate payment of a fine for an offense under

Section 9 of the Immigration Act of March 3rd, 1903, in advance of a trial or hearing, to establish the liability for such fine.

Action No. 510, Assignment No. 67, p. 107.
Action No. 511, Assignment No. 63, p. 92.

POINT I.

The plaintiffs in error were deprived of their property without due process of law, because the fines were imposed in some cases without any previous notice and in all cases without any or any adequate opportunity to be heard.

(a) Before Issuance of Circular 58.

It will hereafter be argued that Congress had no power to authorize an executive department to impose these fines without a judicial trial, but assuming for the present that Congress had that power, the plaintiffs in error here contend that the procedure adopted by the Department of Commerce and Labor for the imposition of these fines was not due process of law.

In reference to the fines imposed before the issuance of Circular 58, the Trial Judge found—

"In imposing said fine the Secretary of the Department of Commerce and Labor acted

without notice to the plaintiff and without any opportunity to the plaintiff to be heard."

Plaintiff's Findings Nos. 8 and 21, Action No. 509, pp. 26, 28.
Plaintiff's Finding No. 8, Action No. 510, p. 34.

The statute relating to findings (U. S. Revised Statutes, Sec. 649) provides that such a finding "shall have the same effect as the verdict of a jury."

The first notice received by the plaintiffs in error in respect to the imposition of such fines was the notice that the fine *had been imposed.*

Plaintiff's Findings Nos. 7 and 20, Action No. 509, pp. 26, 28.
Plaintiff's Finding No. 7, Action No. 510, p. 34.

Certain evidence was offered over the objections of the plaintiffs in error to the effect that when the aliens mentioned in the complaints arrived, the surgeon in charge at Ellis Island sent notices to the plaintiffs in error that such aliens had been placed in the hospital with a disease of the eyes, and that the plaintiffs in error had representatives at Ellis Island known as landing agents who had access to the records of the hospital and could have reported to the plaintiffs in error the sending of these aliens to the hospital, and that from the surgeon's notices the landing agent might have ascertained that penalties would probably be imposed in respect to such aliens. But the Trial Court found with respect to these landing agents:

"At the times of the arrivals of the said aliens at the port of New York, the plaintiff had at Ellis Island a person known as a landing agent whose duties were exclusively to look after the welfare of the aliens arriving by its said steamships and to see that they were properly forwarded to their respective destinations."

"There was no evidence produced on the trial that in the case of the aliens" (naming them) "the said landing agent was in fact notified of the intention of any officer of the United States Government to impose a fine in the case of either of said aliens under the provisions of Section 9 of the Immigration Act of 1903."

Plaintiff's Findings Nos. 33 & 34, Action No. 509, p. 30.
Plaintiff's Findings Nos. 37 & 38, Action No. 510, p. 42.
Plaintiff's Findings Nos. 24 & 25, Action No. 511, pp. 28, 29.

Due objection was raised to the admission of this testimony and it is now urged that this evidence was improperly received because immaterial and irrelevant on the question of notice. It is apparent from the testimony and findings that the landing agent was a subordinate employee, charged with the duty of helping aliens to get tickets, forward baggage, etc., and so to reach their destinations. (Testimony of Mr. Cortes and Mr. Lederer, Action No. 509, pp. 40, 75, Action No. 510, pp. 52, 88, Action No. 511, pp. 38, 74). If this evidence is admissible at all, the most it can show is that these representatives or landing agents if they had searched the records at Ellis

Island might have found that these aliens had been sent to the hospital suffering with disease of the eyes, and from that might have inferred that the disease was a loathsome or contagious disease, and from this might have inferred that the examining surgeon might consider that the disease was so far advanced as to indicate that it could have been detected at the time of foreign embarkation and that, therefore, the Secretary of Commerce and Labor might be satisfied that a competent medical examination made before embarkation would have disclosed the existence of the disease.

Sec. 9 did not authorize the imposition of a fine in the case of all arriving aliens who were suffering from loathsome or contagious disease, but only in the cases where the disease might have been detected if a competent medical examination had been had at the time of foreign embarkation. It appears from testimony offered by the defendant in error (Action 509, pp. 56, 57; Action 510, pp. 69-70; Action 511, pp. 54, 55) that, during the period which elapsed after Sec. 9 took effect and before the trial, there were 9354 deportations for this cause and only 1125 fines or about one fine to every eight cases of deportation. Even if there had been notice to the plaintiffs in error of the discovery of disease in these aliens and of the fact that they were detained for treatment, that could not amount to any notice of an intention to impose a fine, for seven-eighths of such cases, even where they resulted in deportation, did not result in fine.

The remote bearing of such evidence on any claim of notice is shown by the fact that the Trial Judge expressly held that there was no evidence

that the landing agents were in fact notified of the intention of any officer of the Government to impose a fine and that the Trial Judge practically summed up this whole question of fact in the finding first quoted to the effect that the Secretary acted without notice.

While in this case there is no irreconcilable conflict between the findings as to want of notice and those relating to the powers and duties and means of acquiring knowledge of facts on the part of the landing agents, yet, if there were such, the finding that the letter of the Collector's solicitor was the first notice of an intention to impose a fine, and the finding that the fine was in fact imposed without previous notice of an intention to impose a fine in the cases before Circular 58, are controlling.

The Federal Courts do not appear to have been confronted with conflicting findings in any reported decisions but in the State courts where the practice of special findings prevails, the rule is well settled that where the findings are contradictory and irreconcilable, the defeated party is entitled to the benefit of those most favorable to himself.

Nickell v. *Tracy*, 184 N. Y., 386, 390, and the cases there cited;
City of Buffalo v. *D. L. & W. R. R. Co.*, 190 N. Y., 84, 98.

If Sec. 9 of the Immigration Act means that these fines might be imposed without notice to the steamship company and without an opportunity to be heard, then it follows that Congress exceeded its power and the section is unconstitutional. If Sec. 9 did not have that meaning, then

the Department of Commerce and Labor has exceeded its powers. In either case the imposition of the fine was illegal.

The provision of the Fifth Amendment to the Constitution left Congress with no powers to authorize any court or officer to take property without giving the owner previous notice and an opportunity to be heard.

Pennoyer v. *Neff*, 95 U. S., 714, 733;
Scott v. *McNeal*, 154 U. S., 34, 46, 50;
Simon v. *Craft*, 182 U. S., 427;
Central Railway Co. v. *Wright*, 207 U. S., 127;
Londoner v. *Denver*, 210 U. S., 373, 386;
Stuart v. *Palmer*, 74 N. Y., 183;
County of Santa Clara v. *So. Pac. Ry. Co.*, 18 Fed., 385, 424;
Cooper v. *Wandsworth Board of Works*, 14 Common Bench, N. S., 180;
King v. *The Chancellor*, 1 Strange, 557.

Even in tax cases where beyond question Congress can leave the determination of the fact on which the liability depends to an executive officer and where from reasons of public policy the most summary proceeding is allowable, the absence of notice and an opportunity to be heard is fatal.

Londoner v. *Denver*, (*supra*).

(*b*) After Issuance of Circular 58.

The only distinction under this head between those fines imposed before the issuance of Circular 58 and those imposed after its issuance is, that after its issuance procedure was adopted by the Department, as indicated by the notice required by that circular and which was sent to the plaintiffs in error in the case of each fine.

That notice stated that the physical examination of the alien named indicated that a fine should be imposed under Sec. 9 and informed the plaintiffs in error that if they desired to submit evidence to show that the fine should not be imposed they would be allowed *fourteen* days from the date of the notice for that purpose, and that the vessel on which the alien arrived would be granted clearance on condition that a deposit of $100 was made with the Collector of Customs within twenty-four hours after the receipt of the notice.

It was claimed by the Government at the trial that Circular 58 had all the force of statute. That circular was issued by the Secretary under the authority of Sec. 22 of the Immigration Act, which empowered him to issue such instructions not inconsistent with the law as he should deem best calculated for carrying out the provisions of the act. The circular having been issued by this authority was binding on the officials of the Bureau of Immigration and as the limit of *fourteen* days for the submission of evidence was fixed by the circular, it must be assumed that public officials would comply with official instructions and restrict the time for reception of proof to that period. It cannot be urged in support of the provisions of Circular 58

that officials, as a matter of grace or favor, might have extended the time, for the provisions of the circular are clear. At the end of the fourteen days the medical certificate and the evidence submitted must go to the Secretary for final action. This suggested possibility of some process outside that prescribed by the statute is a subject which has been passed upon by this Court in determining whether statutes have afforded due process of law, and the doctrine as laid down by the New York Court of Appeals has been cited with approval.

> "If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute. *Stuart* v. *Palmer*, 74 N. Y., 183."
>
> *Security Trust Co.* v. *Lexington*, 203 U. S., 323, 333.

The foregoing decision relates to notice by grace or favor, but obviously the same legal principle relates to a hearing by grace or favor for which the statute did not provide.

> "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion."
>
> *Roller* v. *Holly*, 176 U. S., 398, 409.

The question, therefore, is, whether or not the allowance of fourteen days to "submit evidence" gave these plaintiffs in error an actual opportunity to be heard or such a reasonable opportun-

ity to put in a defense as constituted due process of law.

The question to which the proofs in each case must be addressed was, whether a certain alien was at the time of embarkation afflicted with a certain disease to such an extent that a competent medical examination *had then* (that is, at the time of the embarkation at the foreign port) would have detected the existence of the disease. If, therefore, the proofs were to bear on this question of fact, they must be proofs as to the condition of the alien at or before embarkation and as to the actual examination which was made in the foreign port.

In both of the cases here presented, which arose after Circular 58, the alien embarked at the port of Southampton in England, and with respect to the possibility of obtaining proofs from Southampton within the fourteen days allowed, the Trial Judge found:

> "A period of fourteen days from the receipt of said letter of July 5, 1905, within which to submit evidence did not afford the plaintiff a reasonable opportunity to obtain evidence from the port of embarkation and be heard upon the question whether a fine should be imposed in the case of said alien."
>
> "The usual period of mail communication between the Port of Southampton, in England, and the Port of New York, in the year 1905, was at least seven days each way between said Port of Southampton and said Port of New York."
>
> Plaintiff's Findings Nos. 29 & 30, Action 510, p. 41.

Plaintiff's Findings Nos. 15 and 16,
Action 511, pp. 27, 28.

It is clear that a period of fourteen days did not afford an opportunity even to have a communication go to Southampton and be returned in the mails, much less to make those preliminary inquiries and have that preparation of proofs which would be necessary.

In *Roller* v. *Holley*, 176 U. S., 398, it was held that where service of process was made upon a defendant residing in Virginia requiring him to appear and answer a suit in Texas within five days, such notice was not reasonable and was not due process of law. Mr. Justice Brown, writing the opinion of the Court, cited (at p. 409) with approval *Chitty's General Practice*, as follows:

> "The time appointed must always allow sufficient opportunity between the service of the summons and the time of appearance, to enable the party to prepare his defence and for his journey; and the justice should in this respect take care to avoid any supposition of improper hurry, or he may incur the censure of the Court of King's Bench, if not be subject to a criminal information.
>
> The precise time will generally depend on distance, and the other circumstances of each particular case. With analogy to other branches of the law, a man should not be required, *omissis omnibus aliis negotiis*, instantly to answer a charge of a supposed offence necessarily less than an indictable misdemeanor, on the same or even the next day, and should be allowed not only ample time to obtain legal advice and assistance, but also to collect his evidence; and even the convenience of witnesses should be considered; and

therefore, in general, several days should intervene between the time of summons and hearing."

If there is to be due process of law, a reasonable opportunity to be heard is just as necessary as a reasonable notice, and in the recent decision of *Londoner* v. *Denver*, 210 U. S., 373, 378, it was held that even in a tax case a hearing demands that he who is entitled to it shall have the right to support his allegations by argument, and, if need be, by proof.

The arbitrary nature of the procedure under Circular 58 is well illustrated in the case of Dolly Nassif, the alien named in the second count of action brought by the International Mercantile Marine Company, which is No. 510 on the docket.

In her case, the notice of liability to the fine was given to the plaintiff in error at 3.50 P. M. on July 5, 1905. The payment of $100 was made on July 7; that is, between twenty-four and forty-eight hours after receipt of the notice, but the fine was imposed in Washington on July 8 for failure to make the deposit within the twenty-four hours. This shows that the officers of the Department were strict in limiting the steamship companies to the times prescribed by Circular 58. But to call this "due opportunity for hearing" as the Secretary of Commerce and Labor does in his letter of July 8, 1905, has no similitude to a judicial utterance and this tends to show the danger of giving such powers to executive officers.

Defendant's Findings Nos. 22-31,
Action 510, pp. 24-30.

In discussing this subject of the adequacy of notice and hearing, Mr. Justice White said in *Simon* v. *Craft*, 182 U. S., 427, 436:

> "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied, we are governed by the substance of things and not by mere form."

The offer to receive proofs within fourteen days was, under the circumstances, a mere form and did not give to these plaintiffs in error any opportunity to be heard of which they could have availed themselves.

It is vain to urge, as the learned Counsel for the Government did below, the fact that in none of these cases the steamship companies availed themselves of the privileges given by the circular and that this showed that they had no defense to offer. Any attempted defense which the circular would permit would be no real defense and would necessarily preclude their showing that they had done the only thing which the law required them to do and which would alone be a complete answer to the charge. Under these circumstances, silence would not be confession nor justify any adverse inference as to the facts.

No hearing on the proofs is provided for by Circular 58. At most it permits the filing of an affidavit or opinion of another physician that he has examined the alien and is of opinion that the disease could not have been discovered at the time or place of embarkation.

If this is the kind of evidence intended by the circular to be solicited or permitted, it would be wholly inadequate. It would be opinion against

opinion, with the great balance of probability in favor of the Immigration officer. For, however eminent a city practitioner, he could hardly have the experience of the examiner of the Bureau of Immigration with this particular disease with which he is brought into almost daily contact.

The only evidence which would be sufficient to overcome the opinion of the skilful and experienced medical officer of the Immigration Station would be proof of the fact that a competent medical man had examined the alien at the time of embarkation and that the alien then had not shown any symptoms of the disease.

If the jury or the Court, or, in this case, the Secretary, was satisfied as to the competency of the medical witness at the port of embarkation, there could be no escape from the conclusion that his testimony to the facts he observed would overcome the mere opinion of a medical man, however eminent, that from the present condition of the alien the disease should have become evident seven or ten days earlier.

Sec. 9 clearly makes it the duty of the Steamship Company to subject every alien at the port of embarkation to a competent medical examination. The Senate Committee which considered this bill recognized this duty (57th Congress, 1st Session Senate Report 2119, page VI).

Yet this rule of procedure or circular is so drawn as to preclude the Company from proving that it discharged that duty. It does not, therefore, constitute due process of law, for it makes wholly inadequate provision for the proof of the only practicable defense.

The foregoing argument is based on the assumption that Circular 58 did not conflict with Sec. 9 of the Immigration Act and, therefore, that it could legally have been adopted as a rule under the authority conferred on the Commissioner General of Immigration by Sec. 22 of that act. It will, however, be noted that Sec. 9 does not authorize any withholding of clearance until after a fine *has been* imposed, while Circular 58 directs the withholding of clearance before the fine has been imposed.

In the recent case of *Londoner v. Denver,* 210 U. S., 373, 386, this Court has held that there must be an opportunity for argument, even in a tax case, if there is to be due process of law. The notice directed to be issued by Circular 58 only permits the steamship companies to "submit evidence to show that said fine should not be imposed". It does not permit, nor provide for any argument on the part of the Steamship Company in its own behalf and it therefore does not come within the rule as to due process of law laid down in the case referred to.

POINT II.

Section 9 of the Immigration Act of 1903 violates Article III of the Constitution relating to the judiciary and it also violates the Fifth Amendment relating to the taking of property without due process of law, because it authorizes the taking of the property of the plaintiffs in error without a judicial trial.

If the Court should not be satisfied as to either of the classes of cases before it that, as matter of fact, in the process adopted the plaintiff was deprived of its property without due process of law, then the question arises of the constitutionality of the statute in submitting to an executive officer the determination of the fact on which the liability of the fine depends. If the act is unconstitutional, then, of course, all the fines were illegally exacted.

The power of Congress with respect to the exclusion or admission of aliens is not disputed and is not involved in these cases. In the Immigration Act of 1903 that power was exercised by Sec. 2, which excluded from admission to the United States certain classes of aliens, including persons afflicted with a loathsome or with a dangerous contagious disease.

Persons within that class were excluded without any reference to when their disease had appeared, and for the protection of the public, they were immediately deported without being allowed to land. All of the aliens referred to in

these cases were so deported. On the trial below, reference was made to a number of decisions of this Court upholding various acts by which Congress had exercised this power of exclusion and had conferred on executive officers the power to pass on various questions relating to the admissibility of aliens.

Those decisions have no bearing in this case, for the reason that the action of the executive officers of the Government in excluding the aliens referred to in these cases is not in any way called in question, and the orders of deportation were forthwith carried out.

But Sec. 9 of the Immigration Act does not relate to the admission or exclusion of aliens. Its obvious purpose is to require steamship companies to make a competent medical examination at the port of foreign embarkation, before receiving aliens as passengers, and in order to secure the making of this examination, Congress, by Sec. 9, has provided that—

> ". . ; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such fine imposed upon it remains unpaid. . . ."

In dealing with the alien himself and in determining any matter which relates to his admissibility Congress has full power and is not restrained by the Constitution from authorizing executive officers to take all necessary steps connected with determining his status and admissibility.

But *Sec. 9 is not a part of the system of inquiry which is necessary to determine the status of the alien and hence to determine his admissibility.* Its purpose is to require a competent medical examination at foreign ports and it requires a fine to be imposed when the Secretary is satisfied that the disease could have been detected by such an examination. Sec. 9 imposes a punishment and requires money to be taken in payment of a fine. and it therefore deals with personal and property rights which are protected by the Constitution.

The fundamental distinction before the Constitution as between the power of Congress to exclude an alien and its power to punish or to take property was stated by this court thus in *Wong Wing* v. *U. S.*, 163 U. S., 228, 237:

> "We regard it as settled by our previous decisions that the United States can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens *from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree,* and causing their deportation, upon executive or subordinate officials.
>
> But when Congress *sees fit to further promote* such a policy by subjecting the persons

> of such aliens to infamous punishment at hard labor, *or by confiscating their property, we think such legislation, to be valid, must provide for a judicial trial* to establish the guilt of the accused." (Italics ours.)

This statement of the law laid down in the *Wong Wing* case has not since been limited or distinguished by this Court, and in *Turner* v. *Williams*, 194 U. S., 279, 291, most of the foregoing quotation was repeated by the Court as laying down the law on this subject.

It is to be observed that any distinction which exists between the *Wong Wing* case and the present cases is in favor of these plaintiffs in error, for in the *Wong Wing* case the Court was considering the rights of the alien himself and not the personal and property rights of third persons. This distinction was well pointed out by Judge Toulmin, in the United States Circuit Court in Alabama, in a case arising under an Immigration Act, when he said:

> "Whatever may be the right of any officer to determine *the status of a particular alien as between the government and the alien, the right to enforce a penalty against the ship that brings him is essentially a judicial right*, and when, therefore, it is attempted on the part of the executive officer to constrain a ship master to pay a penalty, or when clearance is refused to his ship for failure to pay such penalty, the courts are not excluded from a consideration of the question whether a case is made for the imposition of the penalty or the restraint of the ship." (Italics ours.)
>
> *U. S.* v. *Burke*, 99 Fed. Rep., 895, 900.

In the exercise of its powers Congress has necessarily passed a large and increasing number of statutes which impose obligations on individuals in respect to matters under Federal control and which prescribe punishments in cases of violation. The decision in the *Wong Wing* case shows the necessity of distinguishing between the executive enforcement of statutes requiring from the necessity of the case summary action by executive officers and the imposition of punishments by courts in the form of fines, penalties or imprisonment. If the distinction pointed out in the *Wong Wing* case should fail to be observed, we should, to that extent, be governed by executive order and citizens would, to that extent, be deprived of access to the courts.

Some difficulty has been met in distinguishing between the exaction of civil penalties and the imposition of fines in criminal cases, but in cases of this character this Court has been zealous to protect the constitutional privileges of the individual. It is not necessary under this point for the plaintiffs to maintain that the exaction of these fines comes within those provisions of the Constitution which relate to trial for crime, but it is important to note that in cases which arose under the Customs laws and under the Immigration laws for the recovery of penalties by civil action, it has been held in both cases that some of the provisions relating to trial for crimes did apply to such actions.

In *Boyd* v. *U. S.*, which was brought for the forfeiture of certain goods alleged to have been fraudulently imported, Mr. Justice Bradley, writing for the Court, said:

"As, therefore, suits for penalties and forfeitures incurred by the commission of offences against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure—and an unreasonable search and seizure—within the meaning of the Fourth Amendment. Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and affects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to a gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*. We have no doubt that the legislative body is actuated by the same

> motives; but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which become developed by time and the practical application of the objectionable law."

Boyd v. *U. S.*, 116 U. S., 616, 634.

The case of *Lees* v. *United States* (150 U. S., 476) was in form a civil action to recover a penalty under an Immigration Act for importing an alien to perform labor in the United States. The question presented was as to the privilege of the defendant to decline to testify against himself, and on this subject, Mr. Justice Brewer writing the opinion of the Court, said, page 480:

> "This, though an action civil in form, is unquestionably criminal in its nature and in such a case the defendant cannot be compelled to be a witness against himself."

This decision recognizes the criminal nature of an action to recover a penalty and shows the criminal nature of any process adopted to compel the payment of a fine under Section 9 of the Immigration Act of 1903.

The substance of the *Wong Wing* decision was that even in the case of the alien himself, Congress could not require him to be punished, or his property to be taken, except after judicial trial to determine whether or not he was guilty. It is not necessary now to inquire whether these cases come within those provisions of the Constitution relating to the trial for crimes and requiring trial by jury. It is clear that these fines which have been exacted from the plaintiffs-in-error were imposed as punishment for an alleged viola-

tion of statute, and that fact brings these cases directly within the principle of the *Wong Wing* case, that property cannot be taken as a punishment for violation of the Immigration Act without judicial trial.

If Congress itself is without power to punish directly and without judicial trial, then, obviously, it cannot empower an executive officer to punish without such a trial. This subject was considered by the Court in *Kilbourn* v. *Thompson,* 103 U. S., 168, where a witness before a committee of the House of Representatives had been punished by action of Congress for refusing to answer questions. On action being then brought for false imprisonment, this Court held (p. 182):

> "No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains in the provision that no 'person shall be deprived of life, liberty or property, without due process of law,' the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established."

The distinction between the power to regulate which may be given by Congress to an executive officer and the power to punish violations of statute which must remain with the courts, is well illustrated by the *Union Bridge* case (*Union Bridge Co.* v. *U. S.,* 204 U. S., 364).

In that case Congress had authorized the Secretary of War, after first giving the parties an

opportunity to be heard, to determine whether or not the bridge was an unreasonable obstruction to navigation. After he had determined that it was such an obstruction the Bridge Co. failed to comply with his order and an information was filed in the United States District Court on which the Court was asked to impose the punishment. And, in view of the argument made in the First Point of this brief, it is important to note what the Court said with reference to the subject of notice and hearing in the *Union Bridge* case (p. 387):

> "To this may be added the consideration that Congress, by the act of 1899, did not invest the Secretary of War with any power in these matters that could reasonably be characterized as arbitrary. He cannot act in reference to any bridge alleged to be an unreasonable obstruction to free navigation without first giving the parties an opportunity to be heard. He cannot require any bridge of that character to be altered, even for the purpose of rendering navigation through or under it reasonably free, easy and unobstructed, without giving previous notice to the persons or corporations owning or controlling the bridge, specifying the changes recommended by the Chief of Engineers, and allowing a reasonable time in which to make them. If, at the end of such time, the required alterations have not been made, then the Secretary is required to bring the matter to the attention of the United States District Attorney in order that criminal proceedings may be instituted to enforce the act of Congress. In the present case all the provisions of the Statute were complied with. The parties concerned were duly notified and were fully heard. Nor is there any reason to say that the Secretary of War was not entirely justified, if not compelled, by the evidence in find-

ing that the bridge in question was an unreasonable obstruction to commerce and navigation as now conducted."

POINT III.

These cases are clearly distinguishable from cases where this Court has sanctioned the taking of property by the Government without a judicial trial and has placed the determination of the fact on which liability rests on an executive officer, because all of those cases rest upon the existence of an imperative necessity for prompt and summary determination while that necessity does not exist here.

(a) Tax and Customs Cases.

Most of those cases are tax or customs cases.

The existence of governments depends upon the prompt collection of taxes, and in the leading case of *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How., 272, Mr. Justice Curtis explained the reason why the claim for those taxes either on the citizen or on the collecting officer could not be submitted to the courts (p. 282)—

> "It may be added, that probably there are few governments which do or can permit

> their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding, and sometimes by systems of fines and penalties, but always in some way observed and yielded to."

Moreover, the practice of such summary process long antedated the adoption of the Constitution, and the case last cited clearly holds that as matter of intention the Constitution was not designed to disturb this ancient custom.

To further define the scope of the Court's decision, Mr. Justice Curtis added (p. 284)—

> "To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination."

The foregoing case grew out of the defalcation of Swartwout, the collector of customs at New York, and it is to be noted that when the government sought to recover from his sureties it was found necessary to resort to the courts (*U. S.* v. *Eckford's Exrs.*, 1 Howard, 250).

These fines now in question must either be fines in punishment for crime or penalties imposed for the doing of an unlawful or prohibited act not

technically a crime. If they are fines imposed in punishment for crime, then the provisions of the Constitution relating to trial for crime apply. If they are penalties merely then the recovery of those penalties would properly be the subject of civil actions, and, in that event, these cases come under the classification of ordinary civil actions, which, as appears from the last quotation, Congress cannot withdraw from judicial cognizance.

Later, Mr. Justice Swayne pointed out the same distinction with respect to the powers of Congress to lay and collect duties, taxes, imposts and excises:

> "The proceedings of the collector were not in conflict with the amendment to the Constitution which declares that 'no person shall be deprived of life, liberty, or property without due process of law.' The power to distrain personal property for the payment of taxes is almost as old as the common law. Cooley, Taxation, 302. The Constitution gives to Congress the power 'to lay and collect taxes, duties, imposts, and excises.' Except as to exports, no limit to the exercise of the power is prescribed."
>
> *Springer* v. *U. S.*, 102 U. S., 586, 593.

It is the "imperative necessity" referred to by Mr. Justice Curtis, which has forced the distinction between cases like the present and tax or customs cases. There is no element of imperative necessity here.

The office of Sec. 9 imposing these fines is to punish the steamship companies for not making a competent medical examination at the port of

embarkation or for permitting the embarkation of the alien when by such examination the disease could be detected. If fines ought to be imposed at all, there can be no difficulty in imposing them through the courts, and by Sec. 29 of the Immigration Act of 1903 Congress has expressly invested the Circuit and District Courts with full and concurrent jurisdiction of all cases civil and criminal arising under the act.

There is no element of imperative necessity growing out of any question as to the ultimate collectibility of the fine. It is a matter of general knowledge that practically all immigrants now come to this country on the large passenger lines which are amply able to pay fines of this character.

There is no more need here for the summary imposition of a fine by an executive officer than there is in the case of the multitude of statutes which impose fines for violating a prescribed obligation.

A large portion of the revenues of the Federal Government is derived from customs and the necessities of the Government require their prompt collection. Customs cases come within the rule of necessity justifying collection by executive department and without judicial process, and the same principle applies to additional duties or penalties which may, in certain cases, be collected with the duty.

In the leading case of *Passavant* v. *U. S.*, 148 U. S., 214, 220, the Court held:

> "If dissatisfied importers, after exhausting the remedies provided by the statute to ascertain and determine the fair dutiable value of imported merchandise, could apply to the

> courts to have a review of that subject, the prompt and regular collection of the government's revenues would be seriously obstructed and interfered with. The statute authorizes no such proceeding, and the Circuit Court can exercise no such jurisdiction."

Obviously, any tariff based on the value of merchandise involves, as a preliminary step to its imposition, the valuation of the merchandise, and this right or power of determining value has always and necessarily been exercised by the Executive Department of the Government. Where there had been an under-valuation of more than ten per cent. the statute which was construed in the *Passavant* case provided *automatically* that an additional amount should become due and be collected from the importer with the duties. The Court held (p. 221) of these extra amounts exacted—"It is wholly immaterial whether they are called additional duties "or penalties." They were exacted not because of the commission of some offense which would ordinarily be the subject of judicial inquiry, but were fixed automatically by reason of the valuation of the goods which the Executive Department of the Government had necessarily the right and duty to make, and so the Court held in the *Passavant* case:

> "The importers in this case cannot be heard to complain of this additional duty or penalty, which was a legal incident to the finding of a dutiable value in excess of the entry value to the extent provided by the statute. They had full notice of the proceedings before the board of general appraisers upon their appeal to said board, and ample opportunity to be heard on the question of the market value of the im-

ported goods. It cannot, therefore, be properly said that they have been subjected to penalties without notice or an opportunity to be heard, or been deprived of their property without due process of law." (p. 222.)

Whether this liability to additional duty be a penalty or not is, on this question, immaterial and the liability to it does not depend upon the determination of any new or different question of fact from that on which the duty itself depends.

The situation is totally different in the cases at bar, for here the liability does not depend on the determination of the fact of the presence of the disease on which the right of the alien to land depends, but upon the question whether the Steamship Company allowed the alien to embark, having at the time symptoms of the disease which could have been detected if a competent medical examination had then been had.

Long before the precise question whether additional customs duties were technically penalties came up for decision in the courts (*Helwig* v. *U. S.*, 188 U. S., 605), they were regarded as additions to the duty, or as incidents of it, and there being no new question to be decided outside of that of the value of the goods, there was no ground for holding their collection with the duty to be without due process of law. There was in respect to them no question of fact or law for a court to decide.

The same argument applies to penalties added to internal revenue duties.

Where the return is found to be false by reappraisement, the statute adds the penal duty (*Dole* v. *Evans,* 9 Fed. Cases, 399) and the same is true of a penalty for delay in payment.

Clay v. *Swope,* 38 F. R., 396.

It is claimed that the number of fines that would have to be imposed is so great as to constitute the necessity for executive as distinguished from judicial action.

But the danger of swamping the courts has never been made a ground in itself for denying to a party a constitutional or a legal right. Where it has been suggested as a reason justifying the denial of judicial process it has been in cases where the party has first been held not to be entitled thereto, as in the case of *U. S.* v. *Sing Tuck,* 194 U. S., 161, 170, where the Court had already come to the conclusion that the party claiming a right to *habeas corpus* should be denied the right, at least until he had exhausted the remedy given him under the statute before an administrative board or officer, and so in the opinion of the learned Judge in these cases below the same suggestion is made of a danger of swamping the courts after the learned Judge had come to the conclusion that Section 9 of the Act of 1903 was necessary and belonged to the class of summary executive proceedings. Of course, if the Court below was right in holding that the imposition of this fine was, by reason of some urgent public necessity, a matter that could be properly committed to an executive officer, then the argument that such method of procedure would relieve the courts is a perfectly legitimate one in aid of the conclusion. But no court has, it is believed, ever yet decided that the mere fact that a large number of cases is likely to arise is in itself a sufficient reason for the denial of a constitutional right or for the denial of judicial procedure, where there existed no overruling necessity which

the Court could recognize as sufficient as an excuse for the denial of that right.

And moreover the danger of swamping the courts has been greatly exaggerated. The total number of fines sought to be imposed under the Act between March 3rd, 1903, and February 28th, 1907,—substantially four years—was 854 at the port of New York where if anywhere there would be danger of congestion (Record No. 509, p. 57). This is an average of 214 a year. Nor does this show the probable number of cases likely to be brought. There would be no reason for bringing separate suits for every case where a fine was sought to be imposed. Many cases might be from the same ship and the number of ships would more nearly measure the number of suits than the total number of cases in which fines were demanded. When it is considered too that the law was an untested law, that it was believed by the steamship companies to have been invalid in this respect, cases naturally accumulate pending its settlement and the danger of swamping the courts by its effect, if the right to judicial process should be established, seems to be largely imaginary.

If the right to judicial process in this case should be affirmed it is not to be assumed that every case will be contested or that a defence will be made, unless the Company has reasonable ground to believe it can establish that defence. If a law were passed recognizing this right, and if, where a claim is made for a fine on the part of the government, it should be provided that clearance should be withheld until the deposit of a sum sufficient to cover the fine and costs was made, which might be deemed to be a reasonable

regulation in the matter, a very few test cases would establish the ability of the companies to prove satisfactorily a sufficient medical examination at the principal ports of embarkation which would discourage the government from making such claims except in very clear cases. If, on the other hand, the steamship companies were not able to do so, it is not to be assumed that they would unnecessarily litigate the question of fines with the government or carry on a litigation in every case, to their serious loss in costs and expenses.

This question of the existence of a public necessity which excuses the withholding of judicial process is itself a judicial question.

Congress cannot create a necessity by declaring it.

The whole course of decisions on this subject shows that this Court has always carefully examined the circumstances claimed to constitute such necessity and passed on its sufficiency. If it were purely a legislative question all that would have been required would have been to have pointed to the statute.

If it were otherwise one of the greatest functions of this Court, that of guarding "life," "liberty" and "property" from inadvertent or intended encroachment of the legislative power would fail.

While the Court will pay the greatest respect to the opinion of the Congress on this point, it must see for itself that the necessity exists.

The result of the decisions is that "due process of law" which protects "life," "liberty" and "property" is judicial process unless there exists in the particular case some public interest or pub-

lic policy so important and so urgent that it overrides all personal right and requires it to give way and submit to an executive or administrative process of law in the public interest.

This situation and this alone creates the "imperative necessity" which the cases call for and which excuses a departure from the general rule.

Any other view makes the choice between judicial and executive process depend wholly on the legislative will and breaks down the essential virtue of this Constitutional provision.

This view is entirely consistent with the frequently repeated *dictum* that "due process of law is not necessarily judicial process." It reconciles all the cases. It gives due meaning and efficiency to the Constitutional provision and yet recognizes the just operation of that law of "Necessity" which subordinates private right to the public interest.

(*b*) Cases Under the Police Power.

The same element of imperative necessity underlies those cases where this Court has sustained under the police power the summary taking of property by executive officers without judicial process. Mr. Justice Brown, in the case of *Lawton* v. *Steele,* 152 U. S., 133, 136, referred to a number of instances where such powers could properly be exercised by executive officers, as in the destruction of a dangerous building, the slaughtering of diseased cattle, the destruction of unwholesome food, the suppression of objectionable publications, etc.

The case of *Buttfield* v. *Stranahan,* 192 U. S., 470, which arose from the destruction of low

grade tea involved this power to protect the public against unwholesome food as well as the power to regulate imports. And there the power to destroy was not to be exercised until the importer whose goods were found to be such as he had no right to import had abundant opportunity to repossess himself of the goods for the purpose of exportation.

It is obvious that in all such cases there appears an element of imperative necessity which is wholly lacking here; for here, the public have been protected by the deportation of the afflicted alien under a different section of the Immigration Act. In fact, the Immigration Act itself has distinguished between that protection of the public which requires prompt executive action and the imposition of punishment of third parties which could properly be the subject of judicial action by incorporating the provisions for detention and deportation in earlier sections of the act.

And, in the same way, there constantly arise cases where the protection of the public requires the summary taking or destruction of dangerous property, the abatement of public nuisances, or the summary confinement of insane persons and criminals, while the same statutes which provide for this summary action proceed to inflict penalties or punishments which must then be the subject of judicial trial.

(c) Sanitary Laws.

It was claimed at the trial that Section 9 must be treated as a sanitary law. But even if Section 9 is to be considered a sanitary law, it would not follow that a fine imposed by it can be summarily collected by an executive officer.

The reason why judicial process may be dispensed with in enforcing certain provisions of certain sanitary laws is that the protection of the public against the particular danger threatened requires such summary process, and so there may be summary confinement of the insane or of those having contagious diseases. summary vaccination, etc. But the principle which makes necessary summary action in such cases does not extend to the ordinary imposition of fines on third persons for infraction of provisions of even a sanitary law.

Thus a law may authorize the summary arrest and return of a person to quarantine. This is necessary for the protection of the community, but it could not authorize the summary exaction of a fine for permitting his escape, for which there would be no legal necessity which the court could recognize.

The object of Section 9 is to punish steamship companies for failing to make a competent medical examination at the port of embarkation. That punishment takes the form of a fine, and there is just as much of a punishment if the fine is imposed by the courts as there is if the fine were imposed by an executive officer. In either case, the offending steamship company will have to pay the same sum and the public will be no better protected against a repetition of the offense if the fine is imposed by an executive officer than it would if a fine were imposed by the courts.

It cannot for a moment be claimed that there is any great necessity for the collection of such fines as for the collection of taxes, nor does the fact that a summary collection by executive order might be more effective in deterring the party

from a future violation of the statute make a case of urgent necessity within the application of the rule. Such an argument would make all fines collectible by executive process.

(*d*) Post Office Cases.

There are two grounds of distinction between these cases and those actions in which has been called in question the power of Congress to empower post office officials to exclude certain classes of articles or communications from the mails:

(1) The exclusion of improper written or printed materials from the mails is really a part of the police power of the Government, and therefore these post office cases ought to be considered with those which involve an exercise of the police power. This was pointed out by Mr. Chief Justice Fuller, in stating the opinion of the Court in *In Re Rapier*, 143 U. S., 110, 134:

> "The States before the Union was formed could establish post offices and post-roads, and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish postoffices and post-roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective."

(2) In dealing with the question of exclusion of certain articles from the posts, the constitutional rights of the senders were not involved. This

was explained by Mr. Justice Brown in *Public Clearing House* v. *Coyne*, 194 U. S., 497, and in reference to the constitutional question, the Court held (p. 507):

> "It has never been supposed that the exclusion of these articles denied to their owners any of their constitutional rights."

(e) The Union Bridge Case.

In the *Union Bridge* v. *United States*, 204 U. S., 364, Congress had empowered the Secretary of War to determine after certain inquiry whether or not a bridge over a navigable stream was an unreasonable interference with navigation.

In support of the giving of this power to an executive officer, it was held that Congress had itself the right to pass a statute declaring a bridge to be an obstacle to navigation and that having that power it might delegate it to an executive officer.

That decision has no application here, for, as above shown, it has been held by this Court that Congress has no power itself to impose fines.

> See quotation from *Kilbourn* v. *Thompson*, 103 U. S., 168, 182 (*supra*).

So too, the public interest imperatively required that the question be settled once for all and as between the government on the one side and all private interests on the other. It would be neither safe nor possible to leave the question open to be relitigated with every interested party and to be decided perhaps one way in one case and another way in another case.

POINT IV.

It was not in the power of Congress to authorize the Secretary of Commerce and Labor to take private property in the form of a fine without any proof that the alleged offense had been committed.

The construction of Sec. 9 by the trial Judge seems to be that if the Secretary is satisfied that the section has been violated, he may legally proceed to impose the fine and take the plaintiffs' property without reference to the nature or quality of the evidence submitted to him. This is stating in another way that these plaintiffs in error can legally be punished for the commission of an alleged offense *without any proof that the offense had in fact been committed.*

The only suggestion of proof in these cases as to any violation of Section 9 is the certificate of a Bureau of Immigration surgeon relating to the physical conditions *at the time of landing*, in the United States (Defendant's Exhibit L-3, Action 509, p. 84; Action 510, p. 97; Action 511, p. 83). The Immigration Act does not give to this certificate any special weight except on the question of deportation of the alien himself (Sec. 10, Imigration Act), and it is not proof that the steamship company did not in fact cause a competent examination to be made at the port of embarkation.

It is obviously convenient to exact payment of these "fines" in this peremptory method, but as constitutional rights are here invoked, the argument of convenience is not permissible—any sup-

posed advantage in the peremptory collection of such fines is not to be considered as against the impairment of a constitutional right. It has always been convenient to punish an accused person if an official was "satisfied" as to his alleged guilt, but in the development of our institutions such methods have long been discredited, and have been replaced by procedure requiring actual proof of guilt.

If this exaction is legal, why may not Congress authorize the Postmaster General to impose a fine on a person who is alleged to have delayed a mail coach, if the Postmaster General is "satisfied" that the offense has been committed? And what then prevents Congress from vesting in the various and growing executive departments of the Government this peremptory power of punishment for alleged infractions of the numerous and growing Federal statutes, and all merely on the basis that the executive officer is "satisfied" that the offense has been committed, and without any proof that such has been the fact, permitting a mere certificate of the opinion of a clerk or other officer to take the place of proof.

This is punishment by executive order instead of by judicial procedure and no temporary clamor in favor of peremptory methods can warrant such a change in our institutions. If one alleged to be an offender can be punished without proof that the offense has in fact been committed then the innocent may be punished as well as the guilty. To demand such a result is to urge that if we may only have punishments we can dispense with justice.

POINT V.

The powers of the Federal Government with respect to granting and withholding clearance do not affect these cases.

The Trial Judge said in his opinion:

> "In the absence of statute clearance is but the gracious permission of the sovereign to depart from a port into which, without like permission contained in an entry, there was no right to come."

Action No. 509, p. 105.
Action No. 510, p. 119.
Action No. 511, p. 105.

And on this basis it is held that clearance being a privilege, the plaintiffs in error cannot complain that their property has been illegally taken because these exactions were made on a threat that clearance would not be granted.

As a matter of historical research, it may be true that in earlier states of society, the actual conditions of commerce might accurately be stated by saying that the right to enter and clear vessels was a privilege granted by the sovereign power. As a matter of historical research it is certainly true that the right to succeed to the property of a deceased person is also a privilege or concession granted by the sovereign power. But it could hardly be claimed, at the present time, that the Federal Constitution permits a government to actually collect a fine or penalty which was not legally imposed, by providing that the accused should be deprived

of his right to take by will or inheritance until the fine was paid.

If these were legal uses of the privileges which it is within the power of modern governments to grant or to withhold, then the constitutional right of citizens not to be deprived of their property without due process of law would amount to little. The privilege of inheritance to the individual and the privilege of clearance to the shipowner and shipper and the public generally are of so much importance that to withhold such privileges would involve one of the most serious forms of compulsion which could well be applied to property rights, and if this compulsion were applied to collecting exactions which were otherwise illegal, there would be no actual protection against illegal exactions on the part of the government.

In determining what is a taking without due process of law, it is necessary to consider the origin of the demand as well as the particular form of compulsion applied by the government. For, if Congress may constitutionally enforce the payment of illegal exactions by a method of granting and withholding privileges, citizens would be deprived of any practical protection from the clause of the Constitution prohibiting a taking without due process of law.

Under modern conditions, no more serious compulsion could be exerted over business interests than this threat of withholding clearance. The whole modern fabric of commercial dealing and carriage of mails and travel of individuals is based on the assumption that in time of peace clearance will be permitted, and to allow property to be taken at the present day on the theory that clearance is merely the gracious permission

of a sovereign power which may be granted or withheld at will, is to ignore modern conditions and to base property rights at the present time on conditions which have long ceased to exist.

If these fines were not legally due, the more absolute the powers of the Government over a clearance the greater the wrong. The same argument would apply to the use of the Army or the Navy if directed by the statute.

What difference does it make by what kind of force the payments were exacted? Whether the vessel was chained up so that she could not be moved or her movement prevented by an armed vessel or an armed land force or by refusal of clearance, in either case it would be the application of an irresistible force by which the payments were exacted and that in whatever form or by whatever means applied constitutes legal duress.

If clearance is now to be regarded as a privilege, the granting or withholding of which may be entrusted to executive officers, it follows that this power to grant or withhold should be used for the benefit of the public. If the power is now used to extort the payment of fines which have been imposed in violation of the Constitution, such a use tends to impair the constitutional guarantees of the citizen, and that is probably as serious an injury to the public as could well be devised.

If proper procedure had been adopted by the Government, and if these fines had been legally imposed as a result of a judicial trial it would then be in the power of Congress to provide that in addition to the ordinary means of collecting by execution or otherwise the Government might withhold clearance until the fine was paid.

The proposition of the Government seems to be this. That as the right of clearance is a mere privilege, Congress may, by statute, annex to it any condition that it sees fit, and, among others, that it may annex this condition, that the owner or master of the vessel charged with an offence against the laws for which, if found guilty, he is liable to be punished by fine, shall if charged with such offence at the time the clearance of the vessel is applied for, pay such fine, whether he be guilty or not.

The prior statutes relating to clearance of vessels do not show, as claimed by the learned counsel for the defendant in error, that the Government has exercised the power or asserted the right of using this privilege of a clearance as a means of enforcing fines not legally imposed or contested claims or debts not due. The statutes referred to wholly fail to sustain the point.

Section 4206 of the Revised Statutes originally passed in 1797, which requires the payment of the stated fees of the various government officers before a clearance will be granted, is in itself only a reasonable regulation of commerce and shows no intention whatever on the part of Congress to use this means of collecting fees not due; in fact the statute applies only to fees that are actually due.

So Revised Statute, section 3987, which requires an affidavit that no letters or packets are carried on ships except such as come through the regular course of post or belong to the vessel, and section 4202, which provides that no clearance shall be granted until a certificate has been obtained that all goods liable to inspection under

state laws have been so inspected, are reasonable provisions in regulation of commerce; and section 5320, which gives the Secretary of the Treasury authority to refuse clearance whenever he has satisfactory reason to believe that the vessel is carrying merchandise destined for ports in the hands of insurgents against the United States was a necessary war measure, and has no relation whatever to the exercise of a power for collecting debts or obligations not due.

Section 10 of the Immigration Act of March 3rd, 1891, 26 Stats., p. 1084, provides that the master, agent or owner of a vessel bringing aliens into the United States who shall refuse or neglect to return them to the port from which they came or to pay the cost of their maintenance while on land, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $300 for each and every offence, and any such vessel shall not have clearance from any port of the United States while any such fine is unpaid.

It is quite clear that the fine referred to can only be collected through an indictment for a misdemeanor. No power is given by the act to any executive officer to impose the fine, and the withholding of the clearance can only happen after the liability to such fine is established by a conviction in a regular judicial procedure. This was the statute under which the case of *U. S.* vs. *Burke,* above referred to, was decided.

The act of February 23rd, 1887, 24 Stats., p. 414, which provided for the exclusion of contract laborers, being an amendment of the act of February 26th, 1885, 23 Stats., p. 332, ch. 164, contained a provision, sec. 8, that the expense of the

return of such aliens not permitted to land should be borne by the owners of the vessels in which they came, "and any vessel refusing to pay such "expenses shall not thereafter be permitted to "land at or clear from any port of the United "States, and such expenses shall be a lien on said "vessel."

This statute cannot be construed as authorizing a summary and forcible collection of expenses not admitted by the owner to be due.

In providing that there shall be a lien on the vessel for the expense, a remedy is provided by a libel on the vessel if the expenses claimed are not paid or are disputed, and it would seem that this statute gives no authority to the Collector, by refusing a clearance, to compel the payment of a disputed claim. The expression is, "and any "vessel refusing to pay such expense shall not "*thereafter* be permitted to land at or clear from "any port of the United States." No power is given to any executive officer summarily to determine the liability or the amount of it. If the vessel should dispute the amount or dispute the fact, then the remedy of the government is to libel the vessel. She would be released on giving security as in like cases, and if after judgment the amount was not paid, then she would neither be allowed to land at or clear from any port of the United States.

The provisions of the Revised Statutes, Sections 4205 and 2463, which authorize the Collectors of certain collection districts to refuse clearance to vessels loaded with live oak timber unless satisfied that such timber was cut from private land, or if from public land, then by consent of the De-

partment of the Navy, are obviously intended for the protection of the public lands of the United States against depredations and against the carrying out, without right, from the country of live oak cut from public lands.

These sections also are a reasonable regulation of commerce in aid of the protection of the rights of the United States in its timber lands.

The passenger act of August 2, 1882, is also referred to as authority for this proposition (22 Stats., 186 Chap. 374). This act specifically regulated the equipment of all passenger steamers between the ports of this country and foreign ports, and it provided for an inspection, by officers duly appointed for that purpose, of all such passenger steamers, and a report by them to the Collector (Sec. 12, p. 191), and the Collector is authorized to withhold a clearance if it appears by the inspector's report that the provisions of the act have not been complied with, until compliance.

This is a reasonable regulation of commerce, and has no bearing whatever on the question of the right to refuse clearance as a means of compelling the payment of a fine that has not been imposed.

Thus none of these former acts are precedents for the act now in question.

POINT VI.

Section 9 of the Immigration Act of 1903 violates the Sixth Amendment to the Constitution in as much as it denies to the accused in a criminal prosecution the right to a jury trial.

A suit for a penalty for an act prohibited by a statute of the United States is a criminal prosecution within the meaning of the Sixth Amendment.

It is not the form, but the nature of the action, which determines whether it is criminal or civil.

(See opinion of Mr. Justice Brewer in *State of Iowa* v. *Chi. B. & Q. R. R. Co.*, 37 Fed., 497.)

In *Boyd* v. *U. S.*, 116 U. S., 616, 633, 634, Mr. Justice Bradley said:

> "We are also clearly of opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal. . . .
>
> As, therefore, suits for penalties and forfeitures incurred by the commission of offences against the law, are of this quasi-criminal nature, we think they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself."

Under the same reasoning they are "criminal prosecutions" within the meaning of the Sixth

Amendment, and in the case of *Lees* v. *U. S.* (150 U. S., 476, 480, which was a suit for a pecuniary penalty under an immigration act, Mr. Justice Brewer says:

> "This, though an action civil in form, is unquestionably criminal in its nature and in such a case the defendant cannot be compelled to be a witness against himself."

POINT VII.

The judgments should be reversed and the causes remanded to the Circuit Court for a new trial.

Respectfully submitted,

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